



November 29, 2010

City Council Chambers
12000 Findley Road, Suite 300
<http://www.JohnsCreekGA.gov>

7:00pm

A) CALL TO ORDER

B) ROLL CALL

C) PLEDGE OF ALLEGIANCE LISA MUZI—Mrs. Georgia, U.S.A.

D) OPENING REMARKS

E) MINUTES

- Consideration of 11-8-2010 Work Session Summary and Council Minutes

F) APPROVAL OF MEETING AGENDA – Add/Remove Agenda Items

G) PUBLIC COMMENT

H) CONSENT AGENDA –Consent Agenda Items

1. **ACTION ITEM** Consideration to Approve the Contract with Mauldin & Jenkins for Audit Services for Fiscal Year 2010

I) ANNOUNCEMENTS

J) REPORTS AND PRESENTATIONS

1. Rick Bradshaw, President/CEO, Managing Partner TPA Reality – Presentation regarding Gwinnett Tech

K) OLD BUSINESS

L) NEW BUSINESS

1. **ACTION ITEM** Consideration to Approve the Contract with Safebuilt for Building Inspection Services
2. **ACTION ITEM** Consideration to Approve the Contract with Roadworx for Maintenance of City Traffic Signal and Signs
3. **ACTION ITEM** Consideration to Approve the Contract with Peek Paving for Maintenance of Pavement Markings
4. **ACTION ITEM** Consideration to Approve the Contract for Maintenance of City Right of Way Mowing and Storm Drains
5. **ACTION ITEM** Consideration to Approve the Contract for Maintenance of the City Parks
6. **ACTION ITEM** Consideration to Approve the Contract for Road Maintenance
7. **ACTION ITEM** Consideration of MOU Extension for CH2M Hill Contract
8. **R2010-11-61** Consideration of Resolution Authorizing the General Fund Advance of One Hundred Seventy Five Thousand Dollars (\$175,000) to the E-911 Fund to Provide Funding for the Joint Public Safety and Judicial Facilities Authority for the

Cites of Sandy Springs, Georgia and Johns Creek, Georgia.

9. **O2010-11-23** Consideration of Ordinance to Amend the Fiscal Year 2011 Budget for the E-911 Funds of the City of Johns Creek, Georgia, Appropriating the Expenditures, Adopting the Revised Anticipated Revenues for the E-911 Fund
10. **ACTION ITEM** **PUBLIC HEARING** on the Consideration of the Right-of-Way Abandonment of Property Adjacent to 825 Dewfield Court
11. **R2010-11-62** Consideration of Resolution Approving the Disposition of Right-of-Way Property adjacent to 825 Dewfield Court
12. **R2010-11-63** Consideration of Appointment to the Board of Zoning Appeals for the unexpired term of Chip Floyd

M) OTHER BUSINESS

N) PUBLIC COMMENT

O) MAYOR'S COMMENTS

P) EXECUTIVE SESSION (If Needed)

Q) ADJOURNMENT

CITY OF JOHNS CREEK
WORK SESSION SUMMARY

November 8, 2010

5:00pm

The City of Johns Creek Mayor and Council held a Work Session on Monday, November 8, 2010 at 5:00pm. The Work Session was held in the Taylor Farms Conference Room at City Hall, located at 12000 Findley Road, Suite 300 in Johns Creek, Georgia 30097. In attendance were Council Members D. McCabe, R. Johnson, I. Figueroa, K. Richardson and Mayor M. Bodker; Council Member, B. Miller was absent. City Manager J. Kachmar, Attorney B. Riley and other Department Heads were present.

Mayor Bodker opened the meeting with the Pledge of Allegiance.

City Manager Kachmar introduced Contracts Manager Ton Henrikson who reviewed the following service contracts: **Pavement Markings, Traffic Signs and Signals, and Building Inspection Services**. City Manager Kachmar informed Council the city is contracting directly with vendors for these services which were previously provided via subcontracts with CH2M Hill. Mr. Henrikson provided an over view of the vendors and the bid process, which included evaluation of all submissions, and discussion with vendors on qualifications. The committee has recommended awarding contracts to Peek Paving for Pavement Markings; Roadworx for Traffic Signs and Signals; and Safebuilt for building and inspection services. Discussion was held on policy guidelines for awarding contracts what to include, scoring system and encouraging participation of local vendors. Mr. Henrikson said the city's Purchasing Policy could be amended to include additional guidelines. Council asked to receive copies of the RFPs submitted and back up information provided by vendors who responded. Council had no objection to moving these items to the November 29th Council Meeting for consideration. Mr. Henrikson alerted Council RFPs have been released for three additional contracts, Right of Way Maintenance, Storm Drain/Mowing Maintenance and Park Maintenance. Each will be presented at the next Work Session.

Manager Kachmar reviewed the **CH2M Hill 2010 Settlement letter** summarizing the purchase costs for vehicles and IT equipment approved by Council at the October 25th Council Meeting. This includes a \$120K credit to the City for unfilled employee vacancies, a summary of the transfer of building lease agreements from CH2M Hill to City, and the extension of IT services and Public Works subcontract. Council had no objections to moving this item to tonight's Council Meeting agenda for consideration.

Manager Kachmar submitted a request to extend the **Memorandum of Understanding with CH2M Hill, through November 29th 2010**. Council had no objections to the extension and adding this item to tonight's Work Session agenda for consideration.

Public Works Director Ken Hildebrandt introduced Beneful representatives Julie Kahn and Jason Cameron for **Newtown Dog Park Presentation**. Ms. Kahn provided an overview of the dog park contest which Johns Creek resident Patrick Nealy won. Mr. Cameron reviewed the park amenities, which features included synthetic turf, shade structure for dog owners, picnic tables and a walk way/run path. The proposed opening is scheduled for May 2011. Council had no objections to moving the agreement to the November 29th Council Meeting Agenda.

Recreation and Parks Manager Kirk Franz reviewed the **Newtown Park Community Foundation Improvement updates**. Manager Franz reported the Foundation has about \$63.5K allocated for park improvements. The funds will be used to expand the dog park area and install fencing around the perimeter and to enhance landscape /hardscape at the Newtown Senior center. This would include installing planters and benches to create an inviting entrance and patio area.

Director Hildebrandt reviewed the request for **Abandonment and Disposition of Right-of-Way Adjacent to 825 Dewfield Court**, informing Council there is no plan to use this strip of land for public access. An application was filed by the adjacent landowners, this was processed and reviewed and is consistent with the land abandonment guidelines previously established by Council. Council had no objections to moving this item to the November 29th Council Meeting agenda.

Finance Director Monte Vavra presented the **Audit Engagement Letter** to retain Mauldin & Jenkins to perform the City's Fiscal Year 2010 Financial Audit. This is the fourth year of a five-year contract with the firm to conduct the annual audit. Council had no objections to moving this item to the November 29th Council Agenda.

Director Vavra also reviewed the **ChatComm Transfer**, informing council the collection of E911 fees has fallen short of the projections and the joint authority needs an infusion of working capital to continue operating. There was discussion on the impact of the economy on fee collection, partnering with other municipalities in the future, working with IXP to ensure city is getting maximum re-imbursement and working with state legislators to raise the current monthly fee of \$1.50, which has not increased in 30 years.

City Manager Kachmar provided an update on the Household Hazardous Waste Collection event co-sponsored with Keep North Fulton Beautiful this past Saturday. He reported 530 individuals pre-registered but only 400 actually dropped off goods. There were about 50 volunteers and some of the waste collected included several 55 gallon drums of corrosives, waste oil and petroleum products, acids; paint products, and also discarded electronics

Communications Director Grant Hickey presented the seven holiday greeting cards received in response to our second annual **Holiday Greeting Card Contest**. Cards were submitted by fifth grade students from Findley Oaks and Ocee Elementary Schools. Council congratulated all the students for the exceptional cards submitted and decided all should be used to create a montage for the large greeting card to be signed by citizens and sent to military personnel.

City Manager Kachmar mentioned Facilitator Lyle Sumek will be meeting with staff on November 15 and 16th. Mr. Sumek would like to arrange brief discussions with each Council Member.

There being no further business, Mayor Bodker adjourned the Work Session.

Approved,

Attest,

Michael E. Bodker, Mayor

Joan C. Jones, City Clerk

CITY OF JOHNS CREEK
COUNCIL MEETING MINUTES
November 8, 2010 @ 7:00pm

The City of Johns Creek Mayor and Council held a monthly meeting on Monday, November 8, 2010. The meeting was held at 7:00pm in the City Hall Council Chambers located at 12000 Findley Road, Suite 300 in Johns Creek, Georgia.

COUNCIL PRESENT: Post 1-Randall Johnson
Post 2-Dan McCabe
Post 3-Karen Richardson
Post 4-Ivan Figueroa
Post 6-Bev Miller-**Absent**
Mayor Mike Bodker

STAFF PRESENT: City Clerk, Joan Jones
City Manager, John Kachmar
City Attorney Bill Riley

PLEDGE OF ALLEGIANCE: Led Eagle Scout Yasavi Tadavarthi, Troop 3143.

OPENING REMARKS: Mayor Bodker welcomed everyone to the meeting and congratulated the Johns Creek Chamber of Commerce, Johns Creek Business Association, the Kiwanis and Rotary Club for recently hosting a very well attended joint business community networking event. The Mayor announced he attended the *Taste of PGA*, held by the Atlanta Athletic Club and invited citizens to consider volunteering and/or purchasing tickets for the August 2011 PGA Championship. He shared crafts and read a note of thanks received from a visit with third grade students from Abbotts Hill and Wilson Creek Elementary Schools and acknowledged members of the Johns Creek Police Department who were recognized at the Department's Annual Awards Banquet. The Mayor congratulated all the candidates who ran for the council seat, announced there will be run-off election on November 30th and in closing, noted the Atlanta Regional Commission (ARC) recently held an informal meeting with members of the Transportation Round Table to discuss the process for creating the final list of transportation projects when the Round Table meets in December and January.

Mayor Bodker and Council congratulated the Chattahoochee High School Football team on their first undefeated season and wished them luck as they head to the first round of the State Championship games.

MINUTES: Council Member Johnson motioned, seconded by Council Member McCabe to approve the October 25, 2010 Work Session Summary and Council Minutes as presented. There being no discussion, the motion carried unanimously.

MEETING AGENDA APPROVED: Council Member McCabe motioned, seconded by Council Member Richardson to amend the meeting agenda to add an EXECUTIVE SESSION to discuss two (2) legal and one land matter. There being no discussion, the motion passed unanimously and the amended agenda was approved

City Clerk Jones read Public Comment procedures.

PUBLIC COMMENT: Greg Ohmer addressed Council and said he objected to the proposed Solid Waste Ordinance (SWO), including the fee proposed, regulated bins and collection times;

David Kornbluh, commented there should be clarification on the frequency of collection of the SWO fee proposed; Royce Reinecke commented businesses should pay the bulk of proposed SWO fee as they contribute the most litter and convenience stores should pay additional fee on business license; Mark Endres commented he opposes the SWO, the levying of fees for collection, and regulating haulers which he says may lead to increased prices passed onto customers; Stephanie Endres commented the collection of SWO fees will benefit the city coffers and not the citizens, by increasing the cost of doing business in the city for haulers; Larry Pohl spoke in opposition to the SWO saying regulating the haulers will not decrease truck traffic, the fee is a hidden tax to the detriment of the citizens, and the residents have no issues with their current services; Major Thompson commented on the SWO and the unfunded mandate, requiring the city to have a solid waste management program and said the city should do the minimum required to meet the mandate that he is fine with the service he currently has; Sandeep Gupta commented any new fees would create a hardship for citizens and said he has no issues with his current trash hauler.

CONSENT AGENDA: Council Member Johnson motioned, seconded by Council Member Figueroa, to approve the Consent Agenda, which included, ***RESOLUTION 2010-11-58-*** Approve Proclamation Recognizing November as “FAMILY MONTH” in the City of Johns Creek; ***ACTION ITEM;*** Approve AT&T Agreement to Provide Voice and Data Circuits to the City of Johns Creek Approve; ***ACTION ITEM-*** Approve Privileged Resolution for Eagle Scout Yasavi Tadavarthi, Troop 3143; ***RESOLUTION 2010-11-59-*** Authorizing the execution of required documents associated with the use of the Master Lease for acquiring Police and Fire equipment and vehicles and approving other related actions. There being no discussion, the motion carried unanimously and the Consent Agenda was approved.

ANNOUNCEMENTS: City Clerk Jones announced the following meetings:

- *Tuesday, 11/9/10 10:00am —CVB*
- *Tuesday, 11/9/10 5:00pm —RPAC*
- *Thursday, November 11th - Veterans Day -City Offices Closed*
- *Tuesday, 11/16/10 @7:00pm —BZA Meeting*
- *November 25-26 Thanksgiving Holiday-City Offices Closed*
- *Monday, 11/29/10 @5:00pm—Work Session, @ 6:30pm-Holiday Tree /Dreidel Lighting and at 7:00pm-City Council Meeting*

REPORTS & PRESENTATIONS: Council Member Johnson presented the Proclamation recognizing “Family Month” to Lisa Potts, a Johns Creek resident serving as the Vice President for the Local School Advisory Council working on a drug and alcohol prevention program for local high schools.

Council Member Richardson read the following Privileged Resolution recognizing Eagle Scout Yasavi Tadavarthi, Troop 3143:

The City of Johns Creek recognizes Yasavi Tadavarthi of Troop 3143 on successfully completing all the rank requirements for Eagle. Whereas Eagle Scout Tadavarthi has completed his Eagle Scout project, which entailed assembling four outdoor tables, installing new ground cover and pine straw behind the cafeteria of the North American Shirdi Sai Temple of Atlanta; and Whereas, by completing this project Eagle Scout Tadavarthi has created a pleasant outdoor environment for members to eat and gather; and Whereas the Eagle Scout Award is a distinction that will follow him throughout life, the Mayor and Council of the City of Johns Creek recognize and applaud Eagle Scout Yasavi Tadavarthi and wish him well in all his future endeavors.

OLD BUSINESS: No Old Business.

NEW BUSINESS:

CITY COUNCIL 2011 MEETING SCHEDULE: This item was presented at the October 25th Work Session and Council and City Clerk Jones informed council the discussed changes have been incorporated. There were no additional questions or comments. Council Member McCabe motioned, seconded by Council Member Richardson to approve Ordinance 2010-11-22 adopting the 2011 Council Meeting Calendar. There being no further discussion, the motion carried unanimously. (***ORDINANCE 2010-11-22***)

FULTON COUNTY SOIL AND WATER CONSERVATION DISTRICT AGREEMENT: Seth Yurman, Land Development Manager presented to Council the Memorandum of Agreement between Fulton County Soil and Water Conservation District and the City of Johns Creek which will allow for an expedited review process for issuing Land Disturbance Permits. The Department has passed the required State reviews to enter into the agreement and has demonstrated sufficient technical knowledge as well as meeting the other requirements to review the land development plans in-house in lieu of sending out for state review. Council Member Johnson motioned, seconded by Council Member Figueroa to approve Resolution 2010-11-60 authorizing approval of the Memorandum of Agreement between Fulton County Soil and Water Conservation District and the City of Johns Creek. There being no further discussion, the motion carried unanimously. (***RESOLUTION 2010-11-60***) Community Development Director Mike Williams congratulated Mr. Yurman and his staff on their accomplishment in getting the state certification in just two years. Council commended staff for their work.

CONTRACT SETTLEMENT LETTER WITH CH2M HILL: As this item was discussed at tonight's Work Session, Council had no additional questions. Council Member McCabe motioned, seconded by Council Member Richardson to approve the Action Item approving the Contract Settlement Letter with CH2M Hill. There being no further discussion, the motion carried unanimously. (***ACTION ITEM***)

EXTENSION OF MOU WITH CH2M HILL: As this item was discussed at tonight's Work Session, Council had no additional questions. Council Member Richardson motioned, seconded by Council Member McCabe to approve the Action Item approving the extension of the Memorandum of Understanding with CH2M Hill until November 29, 2010. There being no further discussion, the motion carried unanimously. (***ACTION ITEM***)

SOLID WASTE ORDINANCE: Consultant Marie Garrett provided an overview of the State Management Act mandating adoption of a Solid Waste Management Plan, including a waste reduction plan. The City adopted its Solid Waste Plan in 2008 with a 10% waste stream reduction goal. Ms. Garrett reviewed key points in the proposed Solid Waste Ordinance, including, regulations enabling the city to accurately measure waste collection to determine if 10% reduction goal is being met, establishing uniform service delivery in the City, identifying haulers servicing the district and requiring pick-up of recycling. Attorney Scott Hastey presented two versions of the Ordinance before Council, with version #1 mandating the collection of an environmental fee and the 2nd version not requiring the fee.

Council reviewed the Ordinance, indicating there is no requirement to assign haulers, citizens will continue to choose and negotiate with their providers, discussion was held on any ramifications of not meeting state requirements, including losing local government status and ineligibility for certain grants and federal funds, benefits to regulating haulers, and recommended two minor language changes to the non-fee version presented by Attorney Hastey. Council discussed adopting the ordinance without the environmental fee and fund any mandated

programs out of the general fund at this time; they will re-visit the discussion during the next budget cycle. Council Member Johnson motioned, seconded by Council Member McCabe to approve version #2 of Ordinance 2010-09-16 adopting the Solid Waste Ordinance as amended. There being no further discussion, the motion carried unanimously. (***ORDINANCE 2010-19-16***)

AMEND FEE SCHEDULE “B” TO INCLUDE AN ENVIRONMENTAL FEE: Council Member Johnson motioned, seconded by Council Member McCabe to table Resolution 2010-09-16 amending Fee Schedule “B” to include and Environmental Fee. There being no further discussion, the motion carried unanimously. (***RESOLUTION 2010-09-46, TABLED***)

OTHER BUSINESS: City Attorney Riley requested amending the Meeting Agenda for the EXECUTIVE SESSION, to discuss two (2) Land and one (1) legal item. Council Member McCabe motioned, seconded by Council Member Richardson to amend the EXECUTIVE SESSION to discuss two (2) Land and one (1) Legal item. There being no discussion, the motion passed unanimously and the amended agenda was approved.

PUBLIC COMMENT: Mark Endres addressed Council saying he was unhappy with the approval of the Solid Waste Ordinance and a public hearing should have been held; Larry Pohl spoke against the approved Ordinance, saying he does not want the choice of his solid waste hauler regulated. He further commented the Ordinance will not reduce the trucks servicing the city nor reduce waste tonnage. Stephanie Endres read a statement opposing the approved Ordinance saying it will lead to increased costs; Royce Reinecke said he objected to the approval of the Ordinance, which he does not feel will lead to waste reduction; David Kornbluh commented he was not in support of the Ordinance, but was pleased the fee was not imposed at this time and citizen input should be sought before imposing a fee

MAYOR’S COMMENT: The Mayor commented on the difficult decisions Council is forced to make in the best interest of the citizenry and said he welcomes hearing from the citizens. Mayor also thanked staff for all their work.

EXECUTIVE SESSION: Council Member Johnson motioned, seconded by Council Member Richardson to adjourn to Executive Session to discuss two (2) land and one (1) legal item. There was no discussion and the motion carried unanimously.

Council Member Figueroa motioned to come out of Executive Session and resume Regular Session. Council Member Johnson seconded, the motion carried unanimously.

There being no further business, Council Member Figueroa made a motion to adjourn the meeting, Council Member Johnson seconded this motion. The motion carried unanimously and the meeting was adjourned.

Approved:

Attest:

Michael E. Bodker, Mayor

Joan C. Jones, City Clerk



AGENDA REPORT

To: Honorable Mayor and City Council Members

From: John Kachmar, City Manager

By: Monte Vavra, Finance Director

Date: November 08, 2010

Agenda: November 08, 2010 WORK SESSION AGENDA Item: Engagement Letter with Mauldin & Jenkins – Fiscal Year 2010 Audit—**MOVED TO November 29th COUNCIL AGENDA**

Recommendation: Mayor and City Council to approve engagement letter with Mauldin & Jenkins to perform the Fiscal Year 2010 financial audit

Issue: In 2007 the City requested firms to bid on the financial audit for a period of five years; the City selected Mauldin & Jenkins CPA's. This will be the fourth year of the current contract. This request is for the City Council to authorize the Mayor to sign the attached engagement letter for the Fiscal Year 2010 audit.

The fee for the Fiscal Year 2010 base audit will be \$32,000, Single Audit and reporting requirements are estimated to range between \$5,000 - \$9,000, and approximately \$2,000 for the reviewing the procedures and reporting of the E911 revenues and expenditures.

Funds have been included in the FY 2011 budget.

Basis for Recommendation: Renewal of contract previously approved by City Council

Financial Impact: Funds included in FY 2011 budget

Alternative Approaches: None

Attachment(s): Engagement letter

October 19, 2010

Honorable Mayor and Members of the
City Council and City Manager
City of Johns Creek, Georgia
Attention: Monte Vavra, Finance Director
12000 Findley Road, Suite 400
Johns Creek, Georgia 30097

We are pleased to confirm our understanding of the services we are to provide the City of Johns Creek, Georgia (the City) for the year ended September 30, 2010. We will audit the financial statements of the governmental activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information, which collectively comprise the basic financial statements, of the City of Johns Creek, Georgia as of and for the year then ended. Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the City's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the City's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1. Management's Discussion and Analysis (MD&A).
2. Budgetary comparisons for the General Fund and any Major Special Revenue Funds.

Supplementary information other than RSI also accompanies the City's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statements as a whole:

1. Schedule of expenditures of federal awards.
2. Combining and individual fund statements.

The following other information accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and for which our auditor's report will not provide an opinion or any assurance:

1. Introductory section
2. Statistical section

Audit Objectives

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. The objectives also includes reporting on -

- Internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.

The reports on internal control and compliance will each include a statement that the report is intended solely for the information and use of management, the body or individuals charged with governance, others within the entity, specific legislative or regulatory bodies, federal awarding agencies, and if applicable, pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of OMB Circular A-133, and will include tests of accounting records, a determination of major program(s) in accordance with OMB Circular A-133, and other procedures we consider necessary to enable us to express such opinions and to render the required reports. If our opinions on the financial statements or the Single Audit compliance opinions are other than unqualified, we will fully discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

Management Responsibilities

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. Management is also responsible for identifying government award programs and understanding and complying with the compliance

requirements, and for preparation of the schedule of expenditures of federal awards in accordance with the requirements of OMB Circular A-133. As part of the audit, we will assist with preparation of your financial statements, schedule of expenditures of federal awards, and related notes. You are responsible for making all management decisions and performing all management functions relating to the financial statements, schedule of expenditures of federal awards, and related notes and for accepting full responsibility for such decisions. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements and the schedule of expenditures of federal awards and that you have reviewed and approved the financial statements, the schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you are required to designate an individual with suitable skill, knowledge, or experience to oversee any nonaudit services we provide and for evaluating the adequacy and results of those services and accepting responsibility for them.

We will prepare the trial balance for use during the audit. Our preparation of the trial balance will be limited to formatting information into a working trial balance based on management's chart of accounts and trial balances as provided by you. Additionally, our assistance with preparation of the schedule of expenditures of federal awards will be based on the schedule of expenditures of federal awards as provided by you.

Management is responsible for establishing and maintaining effective internal controls, including internal controls over compliance, and for evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met and that there is reasonable assurance that government programs are administered in compliance with compliance requirements. You are also responsible for the selection and application of accounting principles; for the fair presentation in the financial statements of the respective financial position of the governmental activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information of the City of Johns Creek, Georgia and the respective changes in financial position, in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Management is also responsible for making all financial records and related information available to us and for ensuring that management and financial information is reliable and properly recorded. Your responsibilities also include identifying significant vendor relationships in which the vendor has responsibility for program compliance and for the accuracy and completeness of that information. Your responsibilities include adjusting the financial statements to correct material misstatements and for confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying

and ensuring that the entity complies with applicable laws, regulations, contracts, agreements, and grants. Additionally, as required by OMB Circular A-133, it is management's responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan. The summary schedule of prior audit findings should be available for our review subsequent to the start of fieldwork. You are responsible for the preparation of the supplementary information in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You also agree to present the supplementary information with the audited financial statements.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous financial audits, attestation engagements, performance audits or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or other studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

Audit Procedures—General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because an audit is designed to provide reasonable, but not absolute assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period

covered by our audit and does not extend to later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

Audit Procedures—Internal Controls

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by OMB Circular A-133, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to OMB Circular A-133.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and OMB Circular A-133.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City of Johns Creek, Georgia's compliance with applicable laws and regulations and the provisions of contracts and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

OMB Circular A-133 requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Circular A-133 Compliance Supplement* and related addenda for the types of compliance requirements that

could have a direct and material effect on each of the City of Johns Creek's major programs. The purpose of these procedures will be to express an opinion on the City of Johns Creek's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to OMB Circular A-133.

Other Attestation Services

Our annual examination will also be conducted to provide for attestation on certain management assertions in accordance the American Institute of Certified Public Accountant's (AICPA's) Statement on Standards for Attestation Engagements (SSAE) No. 3, *Compliance Attestation*, as amended. The objective of our reports will be to examine management's assertion about Johns Creek's compliance with regards to 9-1-1 funds being expended in accordance with the expenditure requirements specified in the Official Code of Georgia Annotated (OCGA), Section 46-5-134. Our responsibility will be to express an opinion on management's assertion about Johns Creek's compliance based on our examination. Our report will include a statement that the report is intended for the information and use of the Georgia Department of Audits and Accounts and Johns Creek's management and is not intended to be and should not be used by anyone other than these specified parties.

Audit Administration, Fees, and Other

We understand that your employees will prepare all cash or other confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with you the electronic submission and certification. If applicable, we will provide copies of our report for you to include with the reporting package you will submit to pass-through entities. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audits.

We will provide copies of our reports to the City of Johns Creek, Georgia; however, management is responsible for distribution of the reports and financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

We expect to begin our audit on approximately December 27, 2010 and to issue our reports no later than March 31, 2010. Adam Fraley is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them. Our fee for these services will be \$32,500 for the year ended September 30, 2010. This includes fees for our audit of the primary government. The above fee does not include fees for our audit of the Johns Creek Convention & Visitors Bureau or the procedures and reporting associated with the City's E911 revenues and expenditures. Our fees for the audit of the Johns Creek Convention & Visitors Bureau, the City's discretely presented component unit, as presented in the City's financial statements, and the procedures and reporting associated with the City's E911 revenues and expenditures, are based on the time required by the individuals

assigned to the engagement, plus direct expenses. The above fees also do not include fees for the performance of a single audit and the reporting thereof. The cost of a single audit varies depending on the major program requiring testing and our fees for the performance of a single audit and the reporting thereof are also based on the time required by the individuals assigned to the engagement, plus direct expenses; however, we estimate that the fees for the performance of a single audit of one major program to range from \$5,000 - \$9,000. Our hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. However, if major problems arise during our examination, any additional work necessary will be billed at standard rates. This above fee will be subject to adjustments based on unanticipated changes in the scope of our work and/or the incomplete or untimely receipt by us of the information on the respective client participation listings. All other provisions of this letter will survive any fee adjustment. No changes will be made without approval from you regarding the proposed change. Our invoices for these fees will be rendered as work progresses and are payable upon presentation. The above fees are based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with management and arrive at a new fee estimate before we incur the additional costs.

Our professional standards require that we perform certain additional procedures, on current and previous years' engagements, whenever a partner or professional employee leaves the firm and is subsequently employed by or associated with a client (in this case the City of Johns Creek, Georgia). Accordingly, the City agrees it will compensate Mauldin & Jenkins for any additional costs incurred as a result of the employment of a partner or professional employee of Mauldin & Jenkins.

The audit, including other attestation examination, documentation for this engagement is the property of Mauldin & Jenkins and constitutes confidential information. However, pursuant to authority given by law or regulation, we may be requested to make certain audit documentation available to a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Mauldin & Jenkins personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by a regulatory body. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

In the event we are requested or authorized by the City of Johns Creek, Georgia or are required by the City of Johns Creek, Georgia or are required by government regulation, subpoena, or other legal process to produce our documents or our personnel as witnesses with respect to our engagements for the City, the City will, so long as we are not a party to the proceeding in which the information is sought, reimburse us for our professional time and expenses, as well as the fees and expenses of our counsel, incurred in responding to such requests.

The City agrees that our report on the financial statements will not be included in an official statement or other document involved with the sale of debt instruments without our prior consent. Additionally, if the City intends to publish or otherwise reproduce the financial statements and/or make reference to us or our audit, you agree to provide us with printer's proofs or a master for our review and consent before reproduction and/or release occurs. You also agree to provide us with a copy of the final reproduced material for our consent before it is distributed or released. Our fees for any additional services that may be required under our quality assurance system as a result of the above will be established with you at the time such services are determined to be necessary. In the event our auditor / client relationship has been terminated when the organization seeks such consent, we will be under no obligation to grant such consent or approval.


If circumstances occur related to the condition of your records, the availability of sufficient, appropriate audit evidence, or the existence of a significant risk of material misstatement of the financial statements caused by error, fraudulent financial reporting, misappropriation of assets, or noncompliance which in our professional judgment prevent us from completing the audit or forming an opinion, we retain the unilateral right to take any course of action permitted by professional standards, including declining to express an opinion or issue a report, or withdrawal from the engagement.

Government Auditing Standards require that we provide you with a copy of our most recent external peer review report and any letter of comment, and any subsequent peer review reports and letters of comment received during the period of the contract. Our 2008 peer review report accompanies this letter. We did not receive a letter of comment with the peer review report.

We appreciate the opportunity to be of service to the City of Johns Creek, Georgia and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Sincerely,

MAULDIN & JENKINS, LLC


Adam M. Fraley

RESPONSE:

This letter correctly sets forth the understanding of the City of Johns Creek, Georgia.

By: _____

Title: _____



August 15, 2008

To the Owners of
Mauldin & Jenkins, LLC
and the Center for Public Company Audit Firms Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of Mauldin & Jenkins, LLC (the firm) applicable to non-SEC issuers in effect for the year ended May 31, 2008. The firm's accounting and auditing practice applicable to SEC issuers was not reviewed by us since the Public Company Accounting Oversight Board (PCAOB) is responsible for inspecting that portion of the firm's accounting and auditing practice in accordance with PCAOB requirements. A system of quality control encompasses the firm's organizational structure and the policies adopted and procedures established to provide it with reasonable assurance of complying with professional standards. The elements of quality control are described in the Statements on Quality Control Standards issued by the American Institute of Certified Public Accountants (the AICPA). The design of the system, and compliance with it, are the responsibilities of the firm. Our responsibility is to express an opinion on the design of the system, and the firm's compliance with that system based on our review.

Our review was conducted in accordance with standards established by the Peer Review Committee of the Center for Public Company Audit Firms and included procedures to plan and perform the review that are summarized in the attached description of the peer review process. Our review would not necessarily disclose all weaknesses in the system of quality control or all instances of lack of compliance with it since it was based on selective tests. Because there are inherent limitations in the effectiveness of any system of quality control, departures from the system may occur and not be detected. Also, projection of any evaluation of a system of quality control to future periods is subject to the risk that the system of quality control may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the system of quality control for the accounting and auditing practice applicable to the non-SEC issuers of Mauldin & Jenkins, LLC in effect for the year ended May 31, 2008, has been designed to meet the requirements of the quality control standards for an accounting and auditing practice established by the AICPA, and was complied with during the year then ended to provide the firm with reasonable assurance of complying with applicable professional standards.

Clifton Gunderson LLP

Attachment to the Peer Review Report of Mauldin & Jenkins, LLC

Description of the Peer Review Process

Overview

Firms enrolled in the AICPA Center for Public Company Audit Firms (the Center) Peer Review Program have their system of quality control periodically reviewed by independent peers. These reviews are system and compliance oriented with the objectives of evaluating whether:

The reviewed firm's system of quality control for its accounting and auditing practice applicable to non-SEC issuers has been designed to meet the requirements of the Quality Control Standards established by the AICPA.

The reviewed firm's quality control policies and procedures applicable to non-SEC issuers were being complied with to provide the firm with reasonable assurance of complying with professional standards.

A peer review is based on selective tests and directed at assessing whether the design of and compliance with the firm's system of quality control for its accounting and auditing practice applicable to non-SEC issuers provides the firm with reasonable, not absolute, assurance of complying with professional standards. Consequently a peer review on the firm's system of quality control is not intended to, and does not, provide assurance with respect to any individual engagement conducted by the firm or that none of the financial statements audited by the firm should be restated.

The Center's Peer Review Committee (PRC) establishes and maintains peer review standards. At regular meetings and through report evaluation task forces, the PRC considers each peer review, evaluates the reviewer's competence and performance, and examines every report, letter of comments, and accompanying response from the reviewed firm that states its corrective action plan before the peer review is finalized. The Center's staff plays a key role in overseeing the performance of peer reviews working closely with the peer review teams and the PRC. Once the PRC accepts the peer review reports, letters of comments, and reviewed firms' responses, these documents are maintained in a file available to the public. In some situations, the public file also includes a signed undertaking by the firm agreeing to specific follow-up action requested by the PRC.

Firms that perform audits or play a substantial role in the audit of one or more SEC issuers, as defined by the Public Company Accounting Oversight Board (PCAOB), are required to be registered with and have their accounting and auditing practice applicable to SEC issuers inspected by the PCAOB. Therefore, we did not review the firm's accounting and auditing practice applicable to SEC issuers.

Planning the Review for the Firm's Accounting and Auditing Practice Applicable to Non-SEC Issuers

To plan the review of Mauldin & Jenkins, LLC, we obtained an understanding of (1) the nature and extent of the firm's accounting and auditing practice, and (2) the design of the firm's system of quality control sufficient to assess the inherent and control risks implicit in its practice. Inherent risks were assessed by obtaining an understanding of the firm's practice, such as the industries of its clients and other factors of complexity in serving those clients, and the organization of the firm's personnel into practice units. Control risks were assessed by obtaining an understanding of the design of the firm's system of quality control, including its audit methodology, and monitoring procedures. Assessing control risk is the process of evaluating the effectiveness of the reviewed firm's system of quality control in preventing the performance of engagements that do not comply with professional standards.

Performing the Review for the Firm's Accounting and Auditing Practice Applicable to Non-SEC Issuers

Based on our assessment of the combined level of inherent and control risks, we identified practice units and selected engagements within those units to test for compliance with the firm's system of quality control. The engagements selected for review included engagements performed under the *Government Auditing Standards*, audits performed under FDICIA, multi-office audits, and audits of Employee Benefit Plans. The engagements selected for review represented a cross-section of the firm's accounting and auditing practice with emphasis on higher-risk engagements. The engagement reviews included examining working paper files and reports and interviewing engagement personnel.

The scope of the peer review also included examining selected administrative and personnel files to determine compliance with the firm's policies and procedures for the elements of quality control pertaining to independence, integrity, and objectivity; personnel management; and acceptance and continuance of clients and engagements. Prior to concluding the review, we reassessed the adequacy of scope and conducted a meeting with firm management to discuss our findings and recommendations.

Indication of Interest (IOI)	Greater North Fulton Chamber of Commerce
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Issue Date: November 18, 2010	IOI Number:	IOI Title: Gwinnett Technical College – North Fulton Campus Site Selection
IOI Due Date and Time: January 31, 2011 4:00 PM, Local Time	Number of Pages: 9	

CONTACT INFORMATION	
Contact for this IOI: <u>Nancy Davis</u> Chairperson of Workforce Development Committee	
Greater North Fulton Chamber of Commerce 11605 Haynes Bridge Road Suite 100 Alpharetta, Georgia 30009	Phone: (770) 993-8806 Fax: (770) 594-1079

INSTRUCTIONS TO OFFERORS	
Return Sealed Proposal to: Ms. Nancy Davis Greater North Fulton Chamber of Commerce 11605 Haynes Bridge Road, Suite 100 Alpharetta, GA 30009	Mark Face of Sealed Envelope/Package: Offeror's Name and Address
	Special Instructions:
IMPORTANT: SEE STANDARD TERMS AND CONDITIONS	

OFFERORS MUST COMPLETE THE FOLLOWING	
Offeror Name/Address:	Authorized Offeror Signatory: (Please print name and sign in ink)
Offeror Phone Number:	Offeror FAX Number:
Offeror Federal I.D. Number:	Offeror E-mail Address:
OFFERORS MUST RETURN THIS COVER SHEET WITH IOI RESPONSE	

SCHEDULE OF EVENTS

<u>EVENT</u>	<u>DATE</u>
IOI Issue Date	(11/18/10)
Pre-Proposal Conference REQUIRED Held at offices of Greater North Fulton Chamber at address on Page 1 – 2PM – 3:30PM	(12/03/10)
IOI Response Due Date	(01/31/11)
Notification of Offeror Interviews	(02/11/11)
Offeror Interviews	(02/18/11)
Intended Date for Issuance of Recommendation	(03/01/11)

SECTION 1: PROJECT OVERVIEW AND INSTRUCTION

1.0 Project Overview

On June 3, 2010, the Technical College System of Georgia (TCSG) moved North Fulton into the service area for Gwinnett Technical College (“GTC”). The Greater North Fulton Chamber of Commerce (“GNFCC”) now seeks to assist in identifying a site within North Fulton where it may locate a new campus. As part of a workforce development effort on behalf of all of North Fulton, the Greater North Fulton Chamber of Commerce has comprised the Campus Site Committee (the “Committee”) for the purpose of identifying and recommending to GTC sites which GTC will then take to the Commissioner and the TCSG State Board for selection and approval.

The Committee knows that successfully locating a campus will require the commitment or donation of \$5,000,000 of land or capital (or a combination of both) in order to be eligible for additional support from TCSG and the State of Georgia. The Committee is requesting proposals from cities, development authorities, property owners, and other organizations and persons as to one or more sites within North Fulton that would be appropriate for such a campus. The Committee believes that a successful offer will include a donation of land valued at \$5,000,000 or more, the donation of capital of \$5,000,000, or a combined donation of \$5,000,000 or more. The Committee further believes that additional funds from TCSG and/or the State of Georgia can become available to complete the construction and commencement of a North Fulton campus. The Committee is able to help identify suitable offerors with appropriate sites and donations identified herein.

There is a clear need for the services offered by GTC to become available at a campus in North Fulton. Because of the rapidly growing need for workforce training and the expected demand for future facility expansion, the ideal immediate layout would be a building exceeding 250,000 sq. ft. with available land for parking and additional facility growth for which to create a college campus environment. Due to the availability of commercial space in North Fulton, however, this project has the potential to result in acquiring an existing facility, followed by renovation that will allow necessary expansion capacity to create the campus environment.

As referenced above, GTC anticipates the facilities required and/or used by the campus could be comprised of new construction, renovation, or a combination of the two. If the facilities are new construction, anticipated total square footage of useable space would be 250,000 sq. ft. and would be located on no less than 35 acres of undeveloped land (preferably 100 acres) with no history of environmental contamination. If the facilities are provided through renovation of existing facilities, then the total square footage of usable space initially may be as low as 100,000 square feet, with additional space being added throughout the phases identified above. Certification that no asbestos is present in any existing facility proposed will be required.

Either scenario must be compatible with the architectural standards established by the college and must be built to LEED Certificate of Silver Level or higher or will be renovated with LEED EB Certification.

Space requirements include general classrooms, large lecture halls, labs, specialized science labs and classrooms, administrative and academic areas, food service capabilities, faculty offices, stock and equipment rooms, as well as common areas for students. Facility/Campus should be in a highly visible and accessible location with free flowing egress and ingress. Access to public transportation is critical. Facility can be multiple structures or a single structure. Initial available parking that is preferred is approximately 1250 spaces.

The project may adopt a phased approach to facility expansion. In such event, the minimum space requirement for the facility would be 100,000 sq. ft. with a possibility of available square footage and land for expansion. Preferred parking would be 750 spaces.

At full capacity, the new campus is projected to assist 10,000 to 12,000 individuals annually in achieving their educational goals and will also provide the workforce training businesses are demanding to remain competitive.

The Committee welcomes creative and imaginative thought as to other ways of providing the facilities necessary for GTC to establish this new campus in North Fulton. By way of example, but not limitation, an acceptable proposal may include the temporary use of retail space while more permanent facilities are constructed or renovated.

In addition to the broad space requirements identified above, the Committee believes the following criteria are extremely beneficial, though not all may be required or be present in a successful proposal:

- Proximity to transit;
- Proximity to major transportation corridors;
- Proximity to one or more existing high schools (to facilitate dual enrollment);
- The ability to expand if future enrollment exceeds expectations;
- Evidence of coordination between or among jurisdictions;
- Evidence showing demographic trends and workforce requirements; and
- The distance away from institutions offering similar programming or course offerings.
- Adequate utility infrastructure to the undeveloped site or existing building(s) that would include but not limited to water quantity, power, data, storm sewer (including detention), sanitary sewer, and water pressure for fire protection. These utilities must be adequate for any initial

phase but also for future phases of construction to accommodate up to 300,000 GSF of condition building space.

- Multiple points of site access from arterial or minor existing public roadways
- No existing easements or minimal easement restrictions
- No reverter clauses, restrictive covenants, or firm deadlines for the development of the property

The Committee further recognizes that a successful offeror may identify additional factors for consideration and invites each offeror to identify the same, showing how each additional factor is relevant for the Committee's recommendation.

1.1 Single Point of Contact

From the date this Indication of Interest ("the IOI") is issued until an offeror is selected, **offerors are not allowed to communicate with any Committee member or Gwinnett Tech personnel regarding this procurement, except at the direction of Nancy Davis**, the Contact Person in charge of the solicitation. Any unauthorized contact may disqualify the offeror from further consideration. Contact information for the single point of contact is as follows:

Contact:	<u>Nancy Davis</u>
Address:	Greater North Fulton Chamber of Commerce 11605 Haynes Bridge Road, Suite 100 Alpharetta, Georgia 30009
Telephone Number:	770-993-8806
Fax Number:	770-594-1059

1.2 Required Review

1.2.1 Review IOI: Offerors should carefully review the instructions, mandatory requirements, specifications, and standard terms/conditions as set out in this IOI and promptly notify the Contact Person, identified above, in writing or via e-mail of any ambiguity, inconsistency, unduly restrictive specifications, or error which they discover upon examination of this IOI.

1.2.2 Standard Terms and Conditions: By submitting a response to this IOI, offeror agrees to acceptance of the standard terms and conditions as set forth in *Appendix A* of this IOI. Requests for exceptions to the standard terms and conditions or any added provisions must be submitted to the Contact Person referenced above with the offeror's IOI response and must be accompanied by an explanation of why the exception is being taken and what specific effect it will have on the offeror's ability to respond to the IOI or perform the contract. The Committee reserves the right to address non-material, minor, insubstantial requests for exceptions with the highest ranking offeror during negotiation. Any material, substantive, important exceptions requested and granted to the standard terms and conditions will be addressed in any formal written addendum issued for this IOI and will apply to all offerors submitting a response to this IOI.

1.2.3 Mandatory Requirements: To be eligible for consideration, an offeror **must** meet the intent of all mandatory requirements. The Committee will determine whether an offeror's IOI response complies with the intent of the requirements. IOI responses that do not meet the full intent of all

requirements listed in this IOI may be subject to ranking reductions during the evaluation process or may be deemed non-responsive.

1.3 Submitting a Sealed Proposal

1.3.1 Organization of Proposal: Offerors must organize their proposal into sections that follow the format of this IOI, with tabs separating each section. A point-by-point response to all numbered sections, subsections, and appendix is required. If no explanation or clarification is required in the offeror's response to a specific subsection, the offeror shall indicate so in the point-by-point response or utilize a blanket response for the entire section with the following statement:

"(Offeror's Name)" understands and will comply.

1.3.2 Failure to Comply with Instructions: Offerors failing to comply with these instructions may be subject to ranking reductions. The Committee may also choose to not evaluate, may deem non-responsive, and/or may disqualify from further consideration any proposals that do not follow this IOI format, are difficult to understand, are difficult to read, or are missing any requested information.

1.3.3 Multiple Proposals: Offerors may, at their option, submit multiple proposals, in which case each proposal shall be evaluated as a separate document.

1.3.4 Copies Required and Deadline for Receipt of Sealed Proposals: All proposals must be received in sealed packaging. Offerors must submit **one (1) original proposal** and **six (6) copies** of the proposal including a CD in PDF to the address set forth in the Cover Page.

Proposals must be received sealed and at the receptionist's desk of the location noted in the Cover Page prior to 4:00 PM, local time 01/31/2011. Facsimile responses to requests for proposals are NOT accepted.

1.3.5 Late Proposals: *Regardless of cause, late proposals will not be accepted and will automatically be disqualified from further consideration.* It shall be the offeror's sole risk to assure delivery to the receptionist's desk at the designated office by the designated time. Late proposals will not be opened and may be returned to the offeror at the expense of the offeror or destroyed if requested.

1.4 Offeror's Certification

1.4.1 Understanding of Specifications and Requirements: By submitting a response to this IOI, offeror agrees to an understanding of and compliance with the specifications and requirements described in this IOI.

1.4.2 Offeror's Signature: The proposals must be signed in ink by an individual authorized to legally bind the business or entity submitting the proposal. The offeror's signature on a proposal in response to this IOI guarantees that the prices quoted have been established without collusion. Proof of authority of the person signing the IOI response must be furnished upon request.

1.4.3 Offer in Effect for 120 Days: A proposal may not be modified, withdrawn or canceled by the offeror for a 120-day period following the deadline for proposal submission as defined in the Schedule of Events, or receipt of best and final offer, if required, and offeror so agrees in submitting the proposal.

1.5 Cost of Preparing a Proposal

1.5.1 Committee Not Responsible for Preparation Costs: The costs for developing and delivering responses to this IOI and any subsequent presentations of the proposal as requested by the

Committee are entirely the responsibility of the offeror. The Committee is not liable for any expense incurred by the offeror in the preparation and presentation of their proposal.

1.5.2 All Timely Submitted Materials Become Committee Property: All materials submitted in response to this IOI become the property of the Committee and are to be appended to any formal documentation, which would further define or expand any contractual relationship.

SECTION 2: IOI STANDARD INFORMATION

2.0 Authority

This IOI is issued under the authority of the Committee. As directed by GNFC the IOI process is a procurement option allowing the award to be based on stated evaluation criteria.

2.1 Offeror Competition

The Committee encourages free and open competition among offerors. Whenever possible, the Committee will design specifications, proposal requests, and conditions to accomplish this objective, consistent with the necessity to satisfy the Committee's need to procure technically sound, cost-effective services and supplies.

2.2 Receipt of Proposals and Public Inspection

2.2.1 Public Information: During the opening of sealed proposals, only the name of each supplier shall be announced. All information received in response to this IOI, including copyrighted material, is deemed public information and will be made available for public viewing and copying after selection of a site with the following four exceptions: (1) bona fide trade secrets meeting confidentiality requirements that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by the Committee; (3) any financial information requested by the Committee, unless prior written consent has been given by the offeror; and (4) other constitutional protections.

2.2.2 Contact Person's Review of Proposals: Upon opening the sealed proposals received in response to this IOI, the Contact Person in charge of the solicitation will review the proposals and separate out any information that meets the referenced exceptions in Section 2.2.1 above, providing the following conditions have been met:

- Confidential information is clearly marked and separated from the rest of the proposal;
- The proposal does not contain confidential material in the cost or price section; and
- An affidavit from an offeror's legal counsel attesting to and explaining the validity of the trade secret claim is attached to each proposal containing trade secrets. Counsel must use the Committee's *Affidavit for Trade Secret/Private Information* form in requesting information remain confidential. This affidavit form is available by contacting the Contact Person at the contact number set forth under *Section 1.1*.

Information separated out under this process will be available for review only by the Contact Person, the Committee members, and limited other designees. Offerors must be prepared to pay all legal costs and fees associated with defending a claim for confidentiality in the event of a "right to know" (open records) request from another party.

2.3.1 Initial Classification of Proposals as Responsive or Nonresponsive: All proposals will initially be classified as either “responsive” or “nonresponsive”. Proposals may be found nonresponsive any time during the evaluation process or negotiations if any of the required information is not provided; the submitted price is found to be excessive or inadequate as measured by criteria stated in the IOI; or the proposal is not within the plans and specifications described and required in the IOI. If a proposal is found to be nonresponsive, it will not be considered further.

2.3.2 Determination of Responsibility: The Contact Person will determine whether an offeror has met the standards of responsibility. Such a determination may be made at any time during the evaluation process and through negotiation if information surfaces that would result in a determination of non-responsibility. If an offeror is found non-responsible, the determination must be in writing, made a part of the procurement file and mailed to the affected offeror.

2.3.3 Evaluation of Proposals: The Committee will evaluate the remaining proposals and rank the offerors or, if necessary, to seek discussion/negotiation or a “best and final offer” in order to determine the ranking of the offerors. All responsive proposals will be evaluated based on stated evaluation criteria. In ranking against stated criteria, the Committee may consider such factors as accepted industry standards and a comparative evaluation of all other qualified IOI responses in terms of differing price, quality, and contractual factors. These rankings will be used to determine the most advantageous offerings to the TSG.

2.3.4 Completeness of Proposals: The Committee’s rankings will be based on the offeror’s proposal and other items outlined in this IOI. Submitted responses may not include references to information located elsewhere, such as Internet websites or libraries, unless specifically requested. Information or materials presented by offerors outside the formal response or subsequent discussion/negotiation or “best and final offer,” if requested, will not be considered and may result in the offeror being disqualified from further consideration.

2.3.5 Achieve Passing Ranking: Any proposal that fails to achieve a passing ranking for any part/section for which a passing ranking is indicated will be eliminated from further consideration.

2.3.6 Opportunity for Discussion/Negotiation and/or Oral Presentation/ Product Demonstration: After receipt of all proposals, the Committee may initiate discussions with one or more offerors should clarification or negotiation be necessary. Offerors may also be required to make an oral presentation and/or product demonstration to clarify their IOI response or to further define their offer. In either case, offerors should be prepared to send qualified personnel to the Committee to discuss technical and contractual aspects of the proposal. Oral presentations and product demonstrations, if requested, shall be at the offeror’s expense.

2.3.7 Best and Final Offer: The “Best and Final Offer” is an option available to the Committee under the IOI process which permits the Committee to request a “best and final offer” from one or more offerors if additional information is required. Offerors may be contacted asking that they submit their “best and final offer,” which must include any and all discussed and/or negotiated changes. The Committee reserves the right to request a “best and final offer” for this IOI, if any, based on price/cost alone.

2.3.8 Committee Recommendation for Award: The Committee will provide qualifying proposals to the Contact Person that contains the rankings and related supporting documentation for its decision. The Contact Person will review the submissions to ensure compliance with the IOI process and criteria before forwarding the choice(s) to the TCSG.

2.3.9 Negotiation: Committee representatives may begin negotiations with responsive and responsible offerors whose proposals achieve the highest rankings and are, therefore, the most advantageous to the Committee.

2.4 Committee's Rights Reserved

While the Committee has every intention of choosing a campus site as a result of this IOI, issuance of the IOI in no way constitutes a commitment to award or consummate any transaction contemplated by this IOI. Upon a determination such actions would be in its best interest, the Committee, in their sole discretion, reserves the right to (as applicable):

- cancel or terminate this IOI;
- reject any or all proposals received in response to this IOI;
- waive any undesirable, inconsequential, or inconsistent provisions of this IOI which would not have significant impact on any proposal.

SECTION 3: EVALUATION CRITERIA

3.0 Evaluation Criteria

All proposals received will be reviewed by the Contact Person to ensure that all administrative requirements of the IOI package have been met, such as all documents requiring a signature have been signed and submitted. Failure to meet these requirements may be cause for rejection. All proposals that meet the administrative requirements will be turned over to the Committee for further evaluation. The Committee will review all proposals received and determine a ranking based on the information provided in this IOI. As previously indicated, the Committee may, in its sole discretion and in the course of its evaluation, arrange a site visit or request presentations/demonstrations with one or more selected offerors.

SECTION 4: STANDARD CONTRACT INFORMATION

4.0 Standard Terms and Conditions

The Committee's standard terms and conditions are attached to this document as *Appendix A*. Offerors should notify the Committee of any terms within the standard terms and conditions that either preclude them from responding to the IOI or add unnecessary cost. This notification must be made by the deadline for the offeror's IOI response. Any requests for material, substantive, important exceptions to the standard terms and conditions will be addressed in any formal written addendum issued by the Contact Person in charge of the solicitation. The Committee reserves the right to address any non-material, minor, insubstantial exceptions to the standard terms and conditions with the highest ranking offeror at the time of contract negotiation.

4.1 Additional Contract Provisions and Terms

This IOI and any addenda, the offeror's IOI response, including any amendments, a best and final offer, and any negotiations shall be included in any resulting contract. The Standard Terms and Conditions do not define the total extent of the contract language that may be negotiated. In the event of a dispute as to the duties and responsibilities of the parties under any resulting contract, the contract, along with any attachments prepared by the Committee, will govern in the same order of precedence as listed in the contract.

APPENDIX A: STANDARD TERMS AND CONDITIONS

No proposals received after said time or at any place other than the time and place as stated in the notice shall be considered. Unsealed proposals will not be accepted. No responsibility shall attach to The Committee for the premature opening of a proposal not properly addressed and identified.

WITHDRAWAL OF PROPOSAL:

An offeror may withdraw its proposal before the expiration of the time during which proposals may be submitted without prejudice to the proposer, by submitting a written request of withdrawal to the Contact Person.

REJECTION OF PROPOSAL:

The Committee may reject any and all proposals. Also, the right is reserved to waive any irregularities or informalities in any proposal in the proposing procedure. The Committee shall be the sole judge as to which proposals meet the requirements, and in ascertaining this, will take into consideration the business integrity, financial resources, facilities for performing the work, and experience in similar operations of the various offerors.

STATEMENT OF EXPERIENCE AND QUALIFICATIONS:

The offeror may be required, upon request, to prove to the satisfaction of the Committee that he/she/it has the skill and experience and the necessary facilities and ample financial resources to perform the contract(s) in a satisfactory manner and within the required time. If the available evidence of competency of any offeror is not satisfactory, the proposal of such offeror may be rejected. The successful offeror is required to comply with and abide by all applicable federal and state laws in effect at the time the contract is awarded.

NON-COLLUSION AFFIDAVIT:

By submitting a proposal, the offeror represents and warrants that such proposal is genuine and not sham or collusive or made in the interest or in behalf of any person not therein named, and that the offeror has not directly or indirectly induced or solicited any other offeror to put in a sham proposal, or any other person, firm or corporation to refrain from bidding and that the offeror has not in any manner sought by collusion to secure to that offeror any advantage over any other offeror.



AGENDA REPORT

To: Honorable Mayor and City Council Members

From: Tom Henrikson, Senior Contracts Manager

By: John Kachmar, City Manager

Date: November 4, 2010

Agenda: November 8, 2010 WORK SESSION – Agenda Item: Review of Contracts for Building Inspection Services—**MOVED TO 11-29-2010 COUNCIL AGENDA**

Recommendation: Approval of a professional services contract for Building Inspection Services with Safebuilt.

Background: The City decided to contract for service delivery directly as opposed to the previous process of having the services provided through a contract with CH2M HILL.

Review/Description: The City requested a proposal for a professional services contract for Building Inspection Services from the current provider, Safebuilt. Negotiations have been on-going for an agreement and all issues have been satisfactorily resolved.

Financial Impact: The City is to pay Safebuilt for its building inspection services, a portion of all fees collected, as follows: 80% of the first \$750,000 of fees collected and 75% of all fees collected in excess of \$750,000.

Alternative:

Concurrent Review: John Kachmar, City Manager
Scott Hastey, Assistant City Attorney

Attachments: N/A

PROFESSIONAL SERVICES AGREEMENT BUILDING SAFETY SERVICES (Independent Contractor)

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between **SAFE BUILT GEORGIA, INC.** ("Contractor"), a **Georgia** corporation whose principal place of business is 3260 Pointe Parkway NW, Suite 100, Norcross, Georgia 30092, and the **CITY OF JOHNS CREEK, GEORGIA** ("City"), a municipal corporation of the State of Georgia, whose address is 12000 Findley Road, Suite 400, Johns Creek, Georgia 30097. The effective date ("Effective Date") of this Agreement shall be **December 1, 2010**. The Contractor and the City shall be jointly referred to as the "Parties."

RECITALS AND REPRESENTATIONS

WHEREAS, the City incorporated in December 2006 within an area which was previously unincorporated Fulton County; and

WHEREAS, since its incorporation, the City's Building Department services (Building Plans Review, Permitting, and Inspection) have been performed by independent contractors which have exercised independent judgment and authority to administer the City's programs and policies under the general supervision of the City; and

WHEREAS, Contractor represents that it has the skill, knowledge, ability, and expertise to competently, timely, and professionally perform the described services in accordance with this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed by and between the Parties as follows:

1.0 SERVICES

- 1.1 Scope of Services. As directed by and under the supervision of the City Manager (or City Manager's designee) of the City of Johns Creek, the Contractor shall perform all services required pursuant to this Agreement and set forth in the Scope of Services (referred to in this Agreement as the "Services") as the Building Department for the City as described in **Exhibit A**. Contractor expressly acknowledges and agrees that the City may designate an independent contractor of the City to provide oversight of Contractor's performance of Services. At the time of execution of this Agreement, CH2M Hill, Inc., a corporation of the State of Florida ("CH2M Hill"), has been contracted with by the City to provide certain professional services for the City, including providing oversight of the Services to be performed by Contractor herein. City agrees to provide Contractor with at least thirty (30) days written notice in the event the City's designee for provision of oversight of Services is changed from CH2M Hill.
- 1.2 Standards of Performance. In performing the Services, the Contractor shall use that degree of care and skill ordinarily exercised under similar circumstances by

members of the same profession practicing in the State of Georgia. The Contractor represents to the City that the Contractor and the Contractor's employees possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement. In addition, more specific standards governing the Contractor's performance of Services ("Performance Standards") are attached to this Agreement in **Exhibit A**.

- 1.3 Independent Contractor. The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the City. Subject to conformance with City-adopted ordinances, resolutions, policies and procedures, as applicable, and full conformance with Performance Standards set forth in this Agreement, the Contractor shall have and maintain the requisite judgment, discretion, and responsibility for and control of the performance of the Services, the discipline of the Contractor's employees, the responsibility for supervising and directing Contractor's employees time, manner and method for performing work in order to meet the Performance Standards set forth in this Agreement, and other matters incident to the performance of the Services, duties and responsibilities as described and contemplated in this Agreement. The Contractor, by execution of this Agreement and having received such counsel and advice as deemed appropriate by the Contractor, represents to the City that this Agreement does not create a partnership, joint venture, employer/employee or other relationship with the City other than that of an independent contractor and the Contractor understands that the City shall reasonably rely upon such representation in the City's execution of this Agreement. Further, notwithstanding any other provision to the contrary, no Contractor Employee shall be considered an "employee" of the City during the term of this Agreement (as used in this Section 6.2, the term "employee" shall have the same meaning as provided in IRS Publication No. 15 (2010)(Circular E).

- 1.4 Liability for Employment Related Compensation. The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, sub-contractors, agents, volunteers or representatives, including coverage or benefits related but not limited to local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation insurance; disability, injury, or health insurance; professional liability insurance; errors and omissions insurance; or retirement account contributions in regards to the Contractor provision of Services under this Agreement. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds or retirement accounts, insurance premiums or payments, workers compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever. Pursuant to Section 6.6, in the event City is demanded or called

upon to assume any such liabilities, Contractor shall indemnify the City for any and all damages and expenses, including legal fees, incurred as a result thereof.

- 1.5 Reporting. The digital format, formatting, and method of delivery for any reporting required by the City shall be established by the City Manager or his designee in cooperation with the Contractor so that the Contractor's reporting may be integrated into the City's general services reporting.

2.0 COMPENSATION

- 2.1 Compensation for Services. The Contractor shall be paid in accordance with this Section 2.0 and its subsections and the compensation program described in **Exhibit B**. The compensation includes all fees, costs, and other expenses incurred by the Contractor.
- 2.2 Invoices. Each month and in coordination with the submittal of the Monthly Report for the prior month, the Contractor shall submit to the City an invoice for compensation in accordance with this Agreement.
- 2.3 Review of Invoices. All the Contractor invoices shall be sent directly to the Senior Contracts Manager or his/her designee.
- 2.4 Timely Processing of Invoices. Following receipt of any invoice in accordance with Section 2.2, the City shall compensate the Contractor within 30 days of the City's receipt of an invoice (the "Due Date"). The City may request in writing additional information from the Contractor that is reasonably related and relevant in justifying or substantiating the performance of Services for which the Contractor is requesting compensation. The Contractor shall provide such requested additional information promptly and in no case more than 15 days following receipt of the City's written request. The Due Date will be stayed during the period of time from when the City requests such additional information and the additional information is received by the City from Contractor.
- 2.5 Penalty for Delayed Payment to the Contractor. Payments owed to the Contractor but not made within sixty (60) days of the receipt of an invoice shall bear simple interest at the rate of one percent (1%) per month commencing upon the 61st day following such invoice receipt where the Contractor affirmatively advises the City in writing following the Due Date but prior to the 61st day following the receipt of an invoice that it will seek interest on an unpaid invoice.
- 2.6 Date of Payment. Payment, and any notice permitted or required by this Agreement, shall be deemed made and completed upon hand delivery to the Contractor or any employee or designee of the Contractor or upon deposit of such payment or notice in the U.S. Mail, postage pre-paid, addressed to the Contractor.

3.0 CONTRACTOR'S RESPONSIBILITIES

- 3.1 Contractor Knowledge of City and City Laws and Policies. The Contractor shall fully acquaint itself with the available information relative to the Services and in particular shall review and understand the applicable provisions of the Code of

the City of Johns Creek, Georgia, and other rules, regulations, and administrative policies and procedures of the City that will be enforced by the Contractor. The Contractor shall become acquainted with and shall abide by policies and procedures generally applicable to City employees regarding the use of City property and equipment, including, but not limited to, use of City email and internet access and facility access and security requirements.

- 3.2 Ambiguity Concerning Services. The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.
- 3.3 Construction Board of Appeals Meetings. The Contractor shall prepare for, facilitate, attend, record and participate in all meetings of the Construction Board of Appeals in the Contractor's capacity, through the Contractor employee serving as its authorized agent, as the Chief Building Official of the City of Johns Creek. The scope of such attendance and participation is generally set forth and governed by the City-adopted building and safety codes.
- 3.4 Employment-Related Actions. The Contractor shall promptly inform the City Manager (or his designee) of any reasonably anticipated or known employment-related actions (e.g., terminations, resignations, reduction in hours/service, hiring, and substitutions of employees) which may affect in any manner the performance of the Services.
- 3.5 Other Meetings, Training and Surveys. Upon request by the City and with reasonable notice to the Contractor, the Contractor shall prepare for, attend, and participate in City-sponsored or directed meetings necessary to interact with local officials, City staff, and citizens, including but not limited to, meetings and sessions of the City Council, Planning and Zoning Commission, and Board of Zoning Appeals, Board of Construction Appeals, periodic department management meetings, special staff meetings, weekly meetings with Director of Community Development, and meetings to ensure or facilitate performance and compliance with this Agreement.
- 3.6 Notices, Forms, Materials, and Manuals. The Contractor shall create, prepare, maintain and update all Contractor-developed building services notices, forms, handouts, manual and other related materials for use in performing the Services and educating the general public on building services. The Contractor shall consult and cooperate with the City in the creation of all such documents in order to ensure consistency between the Building Department's materials and the other departments in the City. The City shall provide any necessary support to create, update and maintain all notices, forms, handouts and other related materials that are part of the building services software.
- 3.7 Continuing Services Required. The Contractor shall perform all Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement and subject to section 3.11(A) below. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written

consent of the City Council, City Manager, or a person expressly authorized in writing to direct the Contractor's services.

- (A) *Limited Permit Inspection Services Following Termination.* Unless otherwise required in writing by the City, the Contractor shall continue to process to conclusion (customarily, to issuance of certificate of occupancy) any building inspection permit application submitted prior to the date of termination of this Agreement and this Agreement shall remain in effect as to such outstanding permit application until conclusion. In the event that such continuing service is not required by the City for a permit application submitted prior to the date of termination of this Agreement and for which a building permit fee has been paid to the Contractor, the Contractor shall immediately pay to the City any such permit fee held by the Contractor less an amount determined by the Contractor as proportional and appropriate compensation for services actually performed by the Contractor for such permit application as of the date of termination. The Contractor shall report in writing to the City any compensation claimed and withheld pursuant to this subsection (A). In the event that the City disputes the compensation claimed and withheld by the Contractor, which dispute must be made in writing delivered to the Contractor within ten (10) days of the City's receipt of the Contractor's report, the Parties shall select a mutually acceptable third-party to review and determine the appropriateness of the Contractor's claimed compensation and such third-party's decision shall be binding upon the Parties. All costs of such third-party review shall be paid by the Contractor.

- 3.8 Required Permits and Licenses. The Contractor shall be responsible for obtaining and maintaining in a valid status, all licenses, certifications and permits necessary to perform the Services as required by law. Contractor represents to the City that the Contractor and its employees are properly licensed and/or registered within the State of Georgia for the performance of the Services required herein, provided such licensure and/or registration is required by applicable law.
- 3.9 Contractor Compliance with Laws. The Contractor shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions. Without limiting the foregoing, Contractor shall comply with all wage and hour laws and OSHA and other applicable federal and state statutes, regulations and standards for work place safety. Contractor shall be responsible for any and all administrative, civil or other fines imposed by any agency against the City as a result of Contractor's or any of Contractor subcontractors' failure to comply with the laws and regulations referenced in this Section.
- 3.10 Building Official. The City Manager shall have the right utilizing an objective standard based on job performance to require Contractor to transfer the Contractor employee serving as the City Building Official to a different position. Corporation agrees to permanently transfer such individual as soon as reasonably possible upon notification by the City Manager. In the event of a vacancy in the position of the Chief Building Official, whether such vacancy occurs pursuant to the City Manager's request or pursuant to Contractor's

transfer or reassignment or at the Corporation employee's request, Contractor agrees to make selection of a replacement without undue delay, in good faith, and in the best interest of the City. The City shall have the opportunity to interview each of the candidates, and no person may be appointed as the Chief Building Official without the written consent of the City Manager.

4.0 CITY'S RESPONSIBILITIES

- 4.1 City's Obligation. The City shall provide information to the Contractor regarding its requirements for the Services. The City designates CH2M Hill, through CH2M Hill's agent serving as the Director of Community Development for the City, as the representative authorized to act on its behalf with respect to overseeing Contractor's performance of the Services.
- 4.2 Equipment and Support Services. The City shall provide to the Contractor the following equipment and support services without cost provided that such equipment and support is used solely in the performance of the Services for the City. Such equipment and support services may, at the City's election, be shared with other users provided that access to and availability of such equipment and support services as may be necessary for the performance of the Services is maintained at all reasonable times and, at a minimum, during normal business operating hours of the City of Johns Creek:
- Access to and use of a photocopier, scanner and facsimile machine;
 - City prepared forms and documents related to building inspections or permits, or as otherwise related to the performance of Services;
 - Access to workstations located at City Hall.
 - Access to telephones for the workstations with local telephone service;
 - Ability to provide updates and forms for web site development and maintenance pursuant to City policies;
 - Access to computers with appropriate City software programs for the recording of inspections and other Building Department duties;
 - Licensed software programs selected by the City and reasonably suitable for building services tracking together with reasonable training, manuals, and handbooks necessary to operate and implement such software programs.
- 4.3 Software Support. The City shall reasonably cooperate with the Contractor in addressing the compatibility and integration of software programs selected by the City with the Contractor's practices and procedures. The City shall allocate staffing experienced in operating the City selected software program in order to assist the Contractor in creating needed reports and forms.
- 4.4 Default. If the City becomes aware of any fault, defect, non-conformance, error or omission with the Documents prepared by the Contractor, the authorized representative shall give prompt notice thereof to the Contractor.

5.0 TERM AND SCHEDULE

- 5.1 Initial Term. This Agreement shall be for a term of four (4) years and ten (10) months, as further provided for herein and in accordance with O.C.G.A. § 36-60-13. Pursuant to O.C.G.A. § 36-60-13, this Agreement is effective December 1, 2010, and terminates September 30, 2011 (the "initial term") without further obligation on the part of either party other than outstanding obligations incurred prior to the expiration of such term. Thereafter, this Agreement shall be automatically renewed as provided in Section 5.2 (Option to Renew).
- 5.2 Option to Renew. In accordance with O.C.G.A. § 36-60-13 and subject to the further conditions provided in this Section, this Agreement shall be automatically renewed for up to four (4) successive one (1) year terms at the expiration of the initial term (each one (1) year term following the initial term referred to as a "renewal term"), unless either party furnishes the other party written notice of its intent not to renew this Agreement not less than one hundred twenty (120) calendar days prior to the expiration of the initial term. At the termination of each renewal term, this Agreement shall be automatically renewed for an additional one (1) year term, unless either party furnishes the other party written notice of its intent not to renew this Agreement not less than one hundred twenty (120) calendar days prior to the expiration of such renewal term.
- 5.3 Continuing Services Required. The Contractor shall perform services in accordance with this Agreement commencing on the initial term and until such services are terminated in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of services without the written consent of the City Council, City Manager, or a person expressly authorized in writing to direct the Contractor's services, unless otherwise allowed by this Agreement.
- 5.4 Annual Appropriation. This Agreement is contingent upon sufficient appropriation and authorization being made annually by the City Council, prior to the renewal term, for the performance of the services provided in this Agreement. If sufficient appropriations and authorizations are not so made, this Agreement shall terminate upon expiration of the then current term. This provision shall supersede and control over any other provisions to the contrary.

6.0 INSURANCE

- 6.1 Insurance Generally. The Contractor shall obtain and shall continuously maintain during the term of this Agreement insurance of the kind and in the minimum amounts specified as follows:
- 6.1.1 Statutory Worker's Compensation and Employers Liability Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by Georgia law.
- 6.1.2 Comprehensive General Liability insurance with minimum combined single limits of Three Million Dollars (\$3,000,000) per occurrence and in the aggregate. The policy shall be applicable to all premises and all

operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City, and its elected officials, officers, employees and agents as additional insured parties.

6.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than of One Million Dollars (\$1,000,000) per occurrence and in the aggregate with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all of Contractor's subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on and off any work site, and such coverage shall include non-ownership and hired cars (vehicles and equipment) coverage. Such insurance shall be endorsed to name the City, and its elected officials, officers, employees and agents as additional insured parties.

6.1.4 Professional Liability (errors and omissions) Insurance with a limit of coverage of Three Million Dollars (\$3,000,000) per claim and in the aggregate.

6.2 Requirements of Insurance.

6.2.1 Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

6.2.2 By naming the City as an additional insured on Contractor's insurance policy, the City is only securing protection from liabilities arising out of Contractor's negligence as per the applicable policy. The only insurance policy whereby the City will be listed as an additional insured shall be the Comprehensive General Liability and Comprehensive Automobile policies.

6.2.3 No policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.

6.2.4 Every policy of insurance shall provide that the City will receive notice no less than thirty (30) calendar days prior to any cancellation, termination, or a material change in such policy.

6.2.5 Proof of required insurance shall be maintained in all equipment and motor vehicles insured in accordance with the provisions of this Agreement.

- 6.2.6 Contractor shall be responsible for maintaining professional liability insurance for a minimum of four (4) years from the date of expiration of this Agreement. Upon request of City, Contractor shall make available for inspection copies of any claims, filed or made against any policy during the policy term. Contractor shall additionally notify City, in writing within thirty (30) calendar days, of any claims filed or made as it related to the scope of services provided under this Agreement against any policy in excess of Twenty Five Thousand Dollars (\$25,000) during the policy term.
- 6.3 Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement.
- 6.4 Insurance Certificates. Prior to commencement of the Services, the Contractor shall submit to the City certificates of insurance for all required insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section and its subsections shall be indicated on each certificate of insurance.
- 6.5 Additional Insurance Provisions.
- 6.5.1 Contractor will ensure that any and all policies of insurance procured hereunder shall provide for a waiver of subrogation against the City, and Contractor waives any claim against the other arising in contract or tort which is covered by its insurance hereunder.
- 6.5.2 Contractor will additionally name CH2M Hill, Inc. as an additional insured on its policies for comprehensive general liability insurance and comprehensive automobile insurance, and shall provide certificates of insurance providing for same .
- 6.6 Special Provisions Regarding Indemnification, Defense of Claims, and Hold Harmless.
- A. General. The Parties acknowledge that the Contractor's employees and any subcontractors will represent themselves as City of Johns Creek building and licensing personnel, officers, or similar positions and that such representation shall not be construed to alter, undermine or impair the Contractor's status as an independent contractor to the City. Nothing in this Agreement is intended to impair the Contractor's independent ability, if permitted and to the extent permitted by law, to assert a right to governmental immunity in the Contractor's defense of any claim.

B. Notice of Claim. A Party shall notify the other Party immediately and in writing in the event that a Party learns of a claim or an allegation of a claim arising or resulting from the Parties' performance or failure to perform pursuant to this Agreement. The Parties shall reasonably cooperate in sharing information concerning potential claims.

C. Indemnification and Hold Harmless

1. Claims Challenging City Law, Ordinance, Rule, or Policy/Procedure. In the event any claim is asserted by a third party against the City and/or the Contractor (or the Parties' employees, agents, or subcontractors) alleging that any law, statute, ordinance, rule or approved City policy or procedure is unlawful, unconstitutional or otherwise improper, then:

a. The Contractor shall not be entitled to and shall not defend such claim; and

b. The City may, at its sole discretion, elect to defend, not defend, settle, confess, compromise, or otherwise direct the manner in which such claim is addressed; and

c. The Contractor shall reasonably cooperate with the City in any City defense of such claim although the Contractor shall bear any cost or expense incurred by the Contractor in such cooperation, including but not limited to the Contractor's cost and expense incurred in consultation with its own legal counsel; and

d. To the extent allowed by law, the City shall indemnify and hold the Contractor harmless for any damages, liability, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any third party, including but not limited to, any person, firm, partnership, or corporation, to the proportionate extent such loss arises out of such a claim.

2. Reciprocal Indemnification for Certain Claims.

a. For any claim not within the scope of paragraph C(1) above, the Contractor agrees to indemnify and hold harmless the City, and any of its officials, officers, agents, contractors, attorneys, or employees from any and all damages, liability, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any third party, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of any negligent or tortious conduct, error, omission, or act of commission by the

Contractor or any of its employees, agents, or others acting on the Contractor's behalf in performance of the Services.

- b. For any claim not within the scope of paragraph C(1) above, to the extent allowed by law, the City agrees to indemnify and hold harmless the Contractor, and any of its officers, agents, or employees from any and all damages, liability, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any third party, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of any negligent or tortious conduct, error, omission, or act of commission by the City or any of its Council members, officials, officers, agents, contractors, attorneys, employees, or other acting on the City's behalf (other than the Contractor) in performance of the Services.

D. Defense of Claims

1. Claims Against Both the City and the Contractor. In the event any claim is asserted by a third party against both the City and the Contractor arising out of any Party's performance of the Services which claim is not within the scope of paragraph C(1) above, the City shall be entitled to elect to defend such claim on behalf of both the City and the Contractor subject to the provisions governing indemnification set forth in this paragraph. In the event that the City elects to defend such claim, the City shall consult with the Contractor in such defense but the City is entitled to exercise its independent discretion in the manner of defense, including but not limited to the selection of litigation counsel and the discretion to settle, confess, compromise, or otherwise direct and dispose of any claim. In the event that the City elects to defend such claim, the Contractor may at its own cost and expense elect to assume the defense of the Contractor, in which case the Contractor shall bear its own attorneys' fees, costs, and expenses in such defense and such fees, costs, and expenses shall not be subject to indemnification pursuant to this paragraph.
2. Claims Against Only One Party. In the event of any claim asserted by a third party against only one Party to this Agreement arising out of any Party's performance of the Services which claim is not within the scope of paragraph C(1) above, the Party shall be entitled to elect to defend such claim on behalf of such Party subject to the provisions governing indemnification set forth in this paragraph. Where appropriate, the defending Party may also elect to join the other Party through third party practice or otherwise in accordance with the Georgia Rules of Civil Procedure or other applicable rules, in which case the joined Party may defend such claim subject to indemnification pursuant to this paragraph.

3. Liability for Fines/Civil Penalties. In compensation for benefits conveyed hereunder, the parties agrees that Contractor shall be liable for fines or civil penalties, imposed against the City by any federal or state department or regulatory or administrative agency that are a result of Contractor's negligent operation, acts or omissions to the proportionate extent of Contractor's negligence. To the extent that any such fines or civil penalties are contestable in good faith, City will assist Contractor to contest any such fines in administrative proceedings and/or in court prior to any payment by Contractor. Contractor shall pay the costs of contesting any such fines. Contractor shall not be liable for fines or civil penalties that result from violations that occurred prior to December 1, 2006, or for the effects of prior violations by the City to the extent that such prior offense resulted in an escalated assessment of a fine or civil penalty as a repeat or additional offense.

7.0 TERMINATION

- 7.1 Termination for Non-Performance. Should a Party fail substantially to perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing Party in accordance with this section. The performing Party shall first notify in writing the non-performing Party of the specific failure to perform which notice shall demand that such non-performance be cured or remedied within not less than thirty (30) days of the date of the delivery of such notice. In the event the non-performing Party fails to timely cure or remedy such non-performance following such notice and demand, the performing Party may elect to terminate the Agreement by notifying the non-performing Party in writing of its election to terminate for non-performance which termination shall be effective upon the non-performing Party's receipt of such notice of termination.
- 7.2 Termination by Contractor. Contractor may terminate this Agreement at its discretion either with or without cause, by giving written notice thereof to City; provided, however, that such termination shall not be effective until the one hundred and eightieth (180th) day after receipt thereof by City.
- 7.3 Termination by City. City may terminate this Agreement in its entirety at its discretion either with or without cause, by giving written notice thereof to Contractor; provided, however, that such termination shall not be effective until the one hundred and eightieth (180th) day after receipt thereof by Contractor. City may also terminate this Agreement in its entirety, at its discretion with no advance notice, in the event of an insolvency or bankruptcy filing by Contractor or an effective vote by the Board of Directors, officers, employees or shareholders of Contractor to transfer of a controlling interest in Contractor (which shall be defined to mean more than fifty percent (50%) of the ownership interest) to a non-related entity. Contractor shall notify the City Manager immediately in the event of such a vote to so transfer of a controlling interest in Contractor.

- 7.4 Coordination for Transfer of Services. In the event of termination by either party or non-renewal of this Agreement, each party shall render such aid, coordination and cooperation as might be required for an expeditious and efficient termination and transfer of service.

8.0 MISCELLANEOUS PROVISIONS

- 8.1 No Waiver. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.
- 8.2 No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to Georgia Statutes.
- 8.3 Policy of Non-Discrimination. Contractor shall not discriminate against any person in its operations, activities or delivery of services under this Agreement and shall further ensure that Contractor's agents and/or subcontractors comply with same. Contractor, its agents and subcontractors shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for the provision or denial of service delivery.
- 8.4 Binding Effect. The parties hereto agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns.
- 8.5 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of the Contractor. Absolutely no third party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.
- 8.6 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Georgia. Venue for any action arising under this Agreement shall be in the appropriate court for Fulton County, Georgia.
- 8.7 Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by the Contractor without the express written consent of the City Council for City of Johns Creek. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution or motion of the Council. No assignment shall release the Applicant from performance of any

duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.

- 8.8 Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 8.9 Severability. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.
- 8.10 Integration and Amendment. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties.
- 8.11 Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes.
- 8.12 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail.

If to the City:
City of Johns Creek
Attention: City Manager
12000 Findley Road, Suite 400
Johns Creek, GA 30097

If to the Contractor:
SAFEbuilt, Georgia
Attn: Tim Inglis
12000 Findley Road, Suite 400
Johns Creek, GA 30097

With a copy to:
City Attorney
City of Johns Creek
12000 Findley Road, Suite 400
Johns Creek, GA 30097

SAFEbuilt, Georgia
Attn: Mike McCurdie
3755 Precision Drive, #140
Loveland, CO 80538

- 8.13 Georgia Security and Immigration Compliance Act. Contractor agrees to comply with all applicable requirements of the Georgia Security and Immigration Compliance Act of 2006 as codified in O.C.G.A. §§ 13-10-90 and 13-10-91 and regulated in Chapter 300-10-1 of the Rules and Regulations of the State of Georgia, "Public Employers, Their Contractors and Subcontractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program," accessed at <http://www.dol.state.ga.us>, as further set forth in the certification attached as **Exhibit C**. Additionally, Contractor represents that it has

complied with any and all requirements of § 50-36-1 prior to execution of this Agreement.

- 8.14 Drug Screening. Contractor shall have a for-cause drug screening program for specified incidents involving Contractor Employees. Further, for those types of services for which business necessity and the safety of the public demand, Contractor shall require Contractor Employees providing such services to be screened and to satisfactorily pass drug testing prior to assignment to perform any such services under this Agreement, and Contractor shall implement a random drug testing program applicable to such Contractor Employees.
- 8.15 Criminal Record and Background Check/Hiring. The Contractor shall cause to be performed a criminal record and background check for every prospective new or rehired employee that will perform any Service under this Agreement.
- A. The Contractor shall not extend an offer of employment to any prospective employee, or assign any Services for the City to an existing employee, for which the background report indicates such employee is or was a registered sex offender in Georgia or another state or which report indicates that the prospective employee was convicted or pled no contest to a charge of obscenity, prostitution or child prostitution (including solicitation, pandering, procurement, pimping, inducement, or patronizing), public indecency, distribution of materials harmful to children, bribery of a public official, or abuse of public office.
- B. The Contractor shall not extend an offer of employment to any prospective employee or assign Services to an existing employee for which a background report indicates the prospective employee or employee was convicted or pled no contest to a felony within the ten (10) years prior to the prospective date of commencement of employment with the Contractor.
- C. If, subsequent to the assignment of an employee to perform Services, the Contractor learns that the employee was convicted or pled no contest to a charge of obscenity, prostitution or child prostitution (including solicitation, pandering, procurement, pimping, inducement, or patronizing), public indecency, distribution of materials harmful to children, bribery of a public official, or abuse of public office, the Contractor shall promptly remove the employee from performing Services for the City.
- D. If, subsequent to the assignment an employee to perform Services, the Contractor obtains knowledge that an employee was convicted or pled no contest to a felony within the ten (10) years prior to the date of such knowledge by the Contractor, the Contractor shall promptly remove the employee from performing Services for the City.
- 8.16 Ownership of Documents. Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the City of Johns Creek upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the City. Other materials, statistical data derived from other clients and other client projects, software,

methodology and proprietary work used or provided by the Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the City and may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under the Georgia Open Records Act, to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services. The Contractor may publicly state that it performs the Services for the City.

- 8.17 Force Majeure. Neither Party shall be liable for damages, delays, or failure to perform its obligations under this Agreement if performance is made impractical or impossible, or unpredictably and abnormally difficult or costly, as a result of any unforeseen occurrence, including but not limited to fire, flood, snow and ice conditions causing unsafe travel, acts of God, civil unrest, closure of City offices to employees, failure of a third party to cooperate in providing services other than the Contractor's subcontractors, or other occurrences beyond the reasonable control of the party invoking this Force Majeure clause. The Party invoking this Force Majeure clause shall notify the other Party immediately by verbal communication and in writing of the nature and extent of the contingency within five (5) business days after its occurrence or discovery of its occurrence, and shall take reasonable measures to mitigate any impact of the event that triggered the invoking of this Force Majeure clause.
- 8.18 Contractor Subcontractors. The Parties recognize and agree that subcontractors may be utilized by Contractor for the performance of certain services hereunder but the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform services hereunder by Contractor shall perform such services in accordance with all terms and conditions of this Agreement.

8.19 Drug-Free Workplace. Contractor shall maintain a Drug Free Workplace pursuant to the federal Drug Free Workplace Act, as amended from time to time, and shall further ensure that its agents and subcontractors maintain a Drug Free Workplace pursuant to other applicable state laws and regulations. By execution of this Agreement, Contractor certifies that:

(1) a drug-free workplace will be provided for the Contractor's employees during performance of this Agreement;

(2) each subcontractor hired by Contractor shall be required to ensure that the subcontractor's employees are provided a drug-free workplace; and

(3) Contractor, including its employees, agents and subcontractors, will not engage in any unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Agreement.

8.19 Public Records. Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to the City, subject to the provision of O.C.G.A. §50-14-1 *et seq.*, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City. Contractor agrees to retain all public records in accordance with the City's records retention and disposal policies, O.C.G.A. 50-18-92 *et. seq.* and the Georgia Administrative Code. Nothing contained herein shall limit the Contractors right to defend against disclosure of records alleged to be public.

8.20 Conflicts of Interest/Collusion/Anti-Kickback.

8.20.1 Contractor shall not review or perform any services regarding any application made to the City by any client of Contractor, unless the services Contractor performs for such client are unrelated to the City. In such instance, Contractor shall disclose the relationship immediately to the City Manager, who may retain an alternate contractor or service provider to Contractor for those services the performance of which by the Contractor would create a perceived or real conflict of interest.

8.20.2 Neither Contractor nor any of its officers, employees, agents or representatives shall have or hold any employment or contractual relationship that is antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Agreement.

8.20.3 Neither Contractor nor any of its directors, officers, employees, agents or representatives shall obtain any kickbacks or benefits for itself, themselves or other clients as a result of any City purchases or transactions.

8.20.4 Contractor shall not collude with other City contract providers regarding City business or matters. Contractor shall not enter into any business relationships with other City contract providers regarding City business or matters, without the approval of the City Manager, which approval may be withheld at the City Manager's sole discretion.

8.20.5 Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, Contractor, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. Provided however, this provision does not encompass Contractor's ability to have hired or engaged consultants to assist in preparation of the proposal and delivery of the services hereunder. For the breach or violation of this provision, the City shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

9.0 AUTHORITY

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of City of Johns Creek and the Contractor and bind themselves and their respective entities.

10.0 WARRANTIES AND REPRESENTATIONS OF CONTRACTOR

Contractor hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications, and permits required under federal, state and local laws necessary to perform the services.

THIS AGREEMENT is executed and made effective as provided above.

CITY OF JOHNS CREEK, GEORGIA

By:

Mike Bodker, Mayor

Date

ATTEST:

Joan Jones, City Clerk

Date

Approved as to form and legal
sufficiency subject to execution
by the parties

William F. Riley, Jr., City Attorney

Date

SAFE BUILT GEORGIA, INC.

By: _____
Name

Title

Date

Exhibit A – Scope of Services and Performance Measurements

As part of our building department services SAFEbuilt will:

- ✓ Manage necessary building department staff
- ✓ Provide all Building Department related permitting, plan review, and inspection services with the City of Johns Creek
- ✓ Review building permit applications for compliance with Georgia State Minimum Standard Codes for Construction as adopted by the Department of Community Affairs-Georgia DCA
- ✓ Provide information, education, and recommendations to the public on how to obtain and maintain building code compliance
- ✓ Conduct all building inspections, required by City ordinances and resolutions, to ensure life safety and code compliance
- ✓ Receive, respond to, and record inspection requests
- ✓ Provide customer service to design professionals, sub consultants, and homeowners via fax, phone, and e-mail regarding code requirements, violations, and permit submittal
- ✓ Issue "Stop Work Orders" for work done without a permit
- ✓ Issue "Dangerous Building Notices" for vehicle- or fire-damaged buildings
- ✓ Intake, Process and issue permits requiring Building Plan Review services. Without limitation Building Plan Review services shall include the following types of reviews: single-family residence construction; basement finish projects; new commercial buildings; tenant improvements in existing commercial buildings; decks; porches; carports; garages; pole barns and agricultural buildings; existing home upgrades and remodels; and swimming pools.
- ✓ In addition to performing the intake of permits related to Building Plan Reviews, perform intake services for the following types of permits: walls & fences, signs and land disturbance.
- ✓ Review files of buildings being completed and issue "Certificates of Occupancy" where applicable
- ✓ Provide SAFEbuilt's permitting system at no additional cost should the City decide to migrate away from current system and customize the system to fit City's needs
- ✓ Create monthly reports for work performed, fees collected, and performance measurements, as mutually agreed upon
- ✓ Perform plan review on all building projects in the City.
- ✓ Oversee special inspections required of applicants per Chapter 17 of the IBC
- ✓ Perform all building inspections in the City
- ✓ Work with the Fire Department to ensure compliance with any applicable Fire Code and to ensure they have properly inspected all commercial and multi-family structures before issuing a Certificate of Occupancy
- ✓ Provide knowledgeable staff to support and attend Construction Board of Appeals meetings
- ✓ Work with City and State to handle code adoption and the development of local amendments
- ✓ Investigate and respond to complaints from residents or applicants as directed by the City

OTHER SERVICES

SAFEbuilt will provide the following services:

- ✓ Phone and in-office support and consultation
- ✓ Field consultation with homeowners, builders, and sub consultants

- ✓ Code enforcement for building code related matters as requested
- ✓ Fire and disaster response
- ✓ Pre-submittal reviews on major projects

EQUIPMENT AND SUPPLIES

SAFEbuilt will provide the following:

- ✓ Trucks for field use and other staff vehicles
- ✓ All safety equipment and tools to be used by field personnel
- ✓ Cell phones

PLAN REVIEW PERFORMANCE METRICS

The below plan review turnaround times shall be the standard for this scope and will include the building code review portion of the process.

Project Type	Maximum Time to First Comments
New Residential	5 working days
New Commercial (under \$5 million in valuation)	10 working days
New Commercial (over \$5 million in valuation)	20 working days maximum
Alter Residential	5 working days
Alter Commercial	10 working days
Miscellaneous	10 working days

Additionally, all building, wall and fence, sign, and land disturbance applications for permits will be processed and entered by the next business day.

INSPECTION PERFORMANCE METRICS

All inspections requests received via phone, fax, or electronically by 4:00 pm will be completed the next business day

EXHIBIT B – COMPENSATION SCHEDULE

The following fee schedule would apply to all new permits issued after effective date of agreement and is based upon the fee schedule utilized by the City on the effective date of this agreement:

	Applicable to the first \$500,000 of fees collected during the term	Applicable to all fees collected in excess of \$500,000 during the term
Building Permit Fees	80% of permit fees	70% of permit fees
Trade Permit Fees	80% of permit fees	70% of permit fees
Plan Review Fees	80% of plan review fees	70% of plan review fees
Other Inspection Fees	80%	70%
Non-permitted activity (by city request only)		\$75/ hr
Investigative services (by city request only)		\$75/hr

EXHIBIT C

IMMIGRATION AND SECURITY FORM CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Johns Creek has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 989-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the City of Johns Creek, contractor will secure from such subcontractors(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Johns Creek at the time of the subcontractor(s) is retained to perform such service.

EEV / Basic Pilot Program* User Identification Number

BY: Authorized Officer or Agent
(Contractor Name)

Date

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON
THIS DAY OF 201

Notary Public

My Commission Expires:

*As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the “EEV/ Basic Pilot Program” operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).
(End of Form)

DRAFT



AGENDA REPORT

To: Honorable Mayor and City Council Members
From: Tom Henrikson, Senior Contracts Manager
By: John Kachmar, City Manager
Date: November 4, 2010
Agenda: November 8, 2010 WORK SESSION – Agenda Item: Review of Contracts for Traffic Signs and Signal Maintenance—**MOVED TO 11-29-2010 COUNCIL AGENDA**

Recommendation: Award contract for \$251,940.00 to Roadworx for the maintenance of the City's traffic signs and signal.

Background: The City decided to contract for service delivery directly as opposed to the previous process of having the services provided through a contract with CH2M HILL.

Review/Description: A pre-bid conference was held on October 21, 2010. Based on the evaluation criteria set forth in the RFP, the evaluation committee recommended awarding the bid to Roadworx who submitted the lowest bid and met all requirements of the RFP.

Financial Impact: City is required to fund the annual Maintenance contract costs of \$251,940.00

Alternative: Not award the bid.

Concurrent Review: John Kachmar, City Manager
John Henderson, Purchasing Manager
Scott Hastey, Assistant City Attorney Legal

Attachments: Letter of recommendation from Purchasing Manager



MEMORANDUM

Date: November 4, 2010

To: Traffic Signs/Signals Maintenance RFP Workfile

From: John T. Henderson, CPPB
Purchasing Manager

Re: RFP #10-301-1/2

The above reference Request for Proposals (RFP) was released on October 13, 2010 with a due date of November 3, 2010 at 1:00PM. A pre-bid conference was held on October 21, 2010 for questions/answers by the evaluation committee. The following submittals were received and evaluated by the evaluation committee on November 4, 2010:

B & J Contracting
Roadworx
Siemens

The evaluation committee met today and ranked/scored each submittal. Individual score sheets are incorporated herein to the work-file for reference. Based on the evaluation criteria set forth in the RFP it is the unanimous decision of the evaluation committee to make recommendation for award of the above reference RFP to Roadworx as the submittal that met all of the requirements and is in the best interest of the City.

Their cost for the annual maintenance contract is \$251,940.

This project needs to go before the Mayor and City Council work session scheduled for November 8, 2010 for approval.

Effective Date: _____

Expiration Date: _____



**CONTRACT AGREEMENT
FOR THE PROVISION OF
TRAFFIC SIGNS AND TRAFFIC SIGNALS MAINTENANCE SERVICES
(REQUEST FOR PROPOSAL NOS. 10-307-1 AND 10-307-2)**

This Agreement ("Contract") is made and entered into this ____ day of _____, 2010, by and between the **CITY OF JOHNS CREEK, GEORGIA**, a municipal corporation of the State of Georgia (the "City"), and **GEORGIA MANAGEMENT AGENCY, INC. D/B/A ROADWORX**, a Georgia corporation with its principal office located at 200 Bluff Oak Drive, Roswell, Georgia 30076 ("Contractor"); heretofore referred to jointly as the "Parties."

WHEREAS, the City is charged with the responsibility for the establishment of contracts for the acquisition of goods, materials, supplies and equipment, and services by the various departments of the City of Johns Creek; and

WHEREAS, the City has caused Request for Proposal (RFP) No.10-307-1, Traffic Signs Maintenance ("RFP No. 10-307-1"), to be issued soliciting proposals from qualified Contractors to furnish all items, labor services, materials and appurtenances called for within such proposal; and

WHEREAS, the City additionally has caused Request for Proposal (RFP) No. 10-307-2, Traffic Signals Operations and Maintenance ("RFP No. 10-307-2"), to be issued soliciting proposals from qualified Contractors to furnish all items, labor services, materials and appurtenances called for within such proposal; and

WHEREAS, thereafter the City issued Addendum No. 1 to RFP No. 10-307-1 and Addendum No.1 to RFP No. 10-307-2 combining the two RFP's into one and further amending same (such combined and amended RFP's referred to herein as "RFP No. 10-307-1 and 10-307-2" or "RFP"); and

WHEREAS, the contractor selected pursuant to RFP No. 10-307-1 and 10-307-2 is required to provide the services as called for in the specifications; and

WHEREAS, the Contractor submitted a Proposal in response to RFP No. 10-307-1 and 10-307-2 ("Proposal"); and

WHEREAS, the Contractor's submittal was determined by the City to be the proposal most advantageous to the City; and

WHEREAS, the City Council desires to award the contract for the services to be provided pursuant to the RFP to Contractor.

NOW THEREFORE, in consideration of the foregoing recitals, the sums hereinafter set forth and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1.0 SCOPE OF SERVICES

1.1 **Services.** The Contractor has agreed and by these presents does agree with the City to furnish all equipment, tools, materials, skill, labor of every description, and all things necessary to carry out and complete in a good, firm, substantial and workmanlike manner the services set forth in the Scope of Services, which is attached hereto and incorporated herein as **Exhibit A**, in accordance with the terms of this Contract (the “Services”). The Services shall be performed in strict conformity with the specifications provided for in the RFP and Proposal, which shall form an essential part of this Contract. In addition to the foregoing, subject to Section 8.0 hereof, the following terms and conditions, amendments, and other documents are incorporated by reference and made a part of the terms and conditions of this Contract as is fully set out herein:

- **RFP No. 10-307-1 and 10-307-2, as amended (RFP)**
- **Contractor’s Proposal in response to RFP No. 10-307-1 and 10-307-2 (Proposal)**

1.2 **Time for Performance.** During the term of this Contract, work orders shall be submitted to Contractor by the City, or its designee, requesting the performance of certain Services by Contractor (“Work Orders”). Services are required to be performed within the periods of time set forth in the Work Order or pursuant to the work order priority schedule (See Exhibit A), or as otherwise provided in Exhibit A, the RFP and/or the Proposal; provided however, in the event the period of time for the performance of any service is not set forth in the Work Order, Exhibit A, the RFP or the Proposal, the City will determine the basic period of performance for the completion of any service and notify Contractor of the same via written notice. If no specific period for the completion Services is set forth in writing, such time period shall be a reasonable period of time based upon the nature of the activity. If the completion of this Contract is delayed by actions of the City, then and in such event the time of completion of this Contract shall be extended for such additional time within which to complete the performance of the Contract as is required by such delay. This Contract may be extended by mutual consent of both the City and the Contractor for reasons of additional time, additional services and/or additional areas of work.

1.3 **City’s Designee for Oversight of Performance of Services.** Contractor expressly acknowledges and agrees that the City may designate an independent contractor of the City to provide oversight of Contractor’s performance of Services. At the time of execution of this Agreement, CH2M Hill, Inc., a Florida corporation (“CH2M Hill”), has been contracted with by the City to provide certain professional services for the City, including providing oversight of the Services to be performed by Contractor herein. City agrees to provide Contractor with at least thirty (30) days written notice in the event the City’s designee for provision of oversight of Services is changed from CH2M Hill.

2.0 COMPENSATION

- 2.1. **Fee.** Contractor shall be a paid a fixed fee in the amount of **Two-Hundred-Fifty-One-Thousand-Nine-Hundred-and-Forty Dollars (\$251,940.00)** for the performance of Services during the term of this Contract in accordance with the terms of the Proposal (See Financial Proposal, Exhibit B). One-Twelfth (1/12) of such fixed fee shall be billed to the City on a monthly basis following the delivery of Services for such month.
- 2.2 **Pricing.** It is contemplated from time to time, that Contractor may be required to perform or City may request that Contractor provide certain services that are over and beyond the services being compensated pursuant to Section 2.1. Compensation for the performance of any such additional services shall be in accordance with the rates and prices set forth in the Proposal. Unless clearly stated otherwise herein, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties. The prices offered by Contractor and listed on the attached Financial Proposal, a copy of which is attached hereto as Exhibit “B” and incorporated herein, shall be firm throughout the term of this Contract.
- 2.3 **Invoices.** If applicable, and unless the RFP provides otherwise, the Contractor shall submit, on a monthly basis (or, if applicable, regularly on the periodic basis set forth in the RFP), an invoice for the Services provided to the City under the Contract at the billing address specified in the RFP or as provided herein. The invoice shall comply with all applicable rules concerning payment of such claims. The City shall pay all approved invoices in arrears and in accordance with applicable provisions of City law. Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the City for any goods or services provided by or on behalf of the Contractor under the Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Contract. Standard payment terms: Net-30.
- 2.4 **Delay of Payment Due to Contractor’s Failure; City’s Right to Set-Off.** If the City in good faith determines that the Contractor has failed to perform or deliver any service or product as required by the Contract, the Contractor shall not be entitled to any compensation under the Contract until such service or product is performed or delivered. In this event, the City may withhold that portion of the Contractor’s compensation which represents payment for services or products that were not performed or delivered. To the extent that the Contractor’s failure to perform or deliver in a timely manner causes the City to incur costs, the City may deduct or set off the amount of such incurred costs from any amounts payable to Contractor. The City’s authority to deduct such incurred costs shall not in any way affect the City’s authority to terminate the Contract.
- 2.5 **Set-Off Against Sums Owed by the Contractor.** In the event that the Contractor owes the City any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, the City may set off the sum owed to the City against any sum owed by the City to the Contractor in the City’s sole discretion.

3.0 TERM

- 3.1 **Term.** Pursuant to O.C.G.A. § 36-60-13, this Contract is for a term of one (1) year commencing December 1, 2010, and terminating November 30, 2011 (the “initial term”) without further obligation on the part of either party other than outstanding obligations

incurred prior to the expiration of such term.

- 3.2 **Contract Renewal.** The City shall have the option, at its sole discretion, to renew the Contract for up to four (4) successive one (1) year terms on a year-to-year basis by giving the Contractor written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term and requesting Contractor's written consent for renewal of the Contract. Renewal will depend upon the best interests of the City, funding, and Contractor's performance. Renewal will be accomplished through the issuance of a Notice of Award Amendment. Upon the City's election to renew any part of this Contract, Contractor shall remain obligated to perform in strict accordance with this Contract unless otherwise agreed by the City and the Contractor.

- 3.3 **Contract Extension.** In the event that this Contract shall terminate or be likely to terminate prior to the making of an award for a new contract for similar services, the City may, with the written consent of Contractor, extend this Contract for such period as may be necessary to ensure the City continuing services.

4.0 INDEPENDENT CONTRACTOR

- 4.1 **Independent Contractor Status.** Contractor is and shall remain an independent contractor; not an employee, agent or servant of the City, and Contractor shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, or employer/employee relationship with the City. Services provided by Contractor shall be by employees, agents or subcontractors of Contractor and subject to supervision by Contractor, and not as officers or employees of City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, and other similar administrative procedures applicable to services rendered under this Agreement shall be the obligation of Contractor.

- 4.2 **Liability for Employment Related Compensation.** The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, sub-contractors, agents, volunteers or representatives, including coverage or benefits related but not limited to local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation insurance; disability, injury, or health insurance; professional liability insurance; errors and omissions insurance; or retirement account contributions in regards to the Contractor provision of Services under this Contract. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds or retirement accounts, insurance premiums or payments, workers compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever. Pursuant to Section 5.0, in the event City is demanded or called upon to assume any such liabilities, Contractor shall indemnify the City for any and all damages and expenses, including legal fees, incurred as a result thereof.

- 4.2 **Licenses, Registrations, Certifications and Permits.** The Contractor shall be

responsible for obtaining and maintaining in a valid status, all licenses, registrations, certifications and permits necessary to perform the Services as required by law. Contractor represents to the City that the Contractor and its employees are properly licensed and/or registered within the State of Georgia for the performance of the Services required herein, provided such licensure and/or registration is required by applicable law. Contractor shall provide copies of any such licenses, certifications or permits to the City.

- 4.3 **No Agency.** Neither the City nor the Contractor has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise mutually agreed to in writing. The Contractor agrees not to represent itself as the City's agent for any purpose to any party or to allow any employee of the Contractor to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. The Contractor shall assume full liability for any contracts or agreements the Contractor enters into on behalf of the City without the express knowledge and prior written consent of the City.

5.0 INDEMNIFICATION

The Contractor agrees to indemnify, hold harmless and defend the City, its officers, employees and agents from and against any and all liabilities, suits, actions, legal proceedings, claims, demands, damages, costs and expenses (including attorney's fees)("Claims") to the extent related to or arising out of Contractor's breach of any of the representations and warranties provided herein, Contractor's breach of any of the terms of this Contract, or any negligent or intentional act or omission of the Contractor, its agents, employees, or subcontractors, except for any Claims that arise from the City's sole negligence.

6.0 INSURANCE

- 6.1 **Insurance Generally.** The Contractor shall obtain and shall continuously maintain during the term of this Contract insurance of the kind and in the minimum amounts specified as follows:

6.1.1 Statutory Worker's Compensation and Employers Liability Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by Georgia law. If Contractor is self-insured, Contractor shall additionally provide the City with a certificate from the Georgia Board of Workers' Compensation stating that the Contractor qualifies to pay its own workers' compensation claims.

6.1.2 Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) per occurrence and in the aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City, and its elected officials, officers, employees and agents as additional insured parties.

6.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than of One Million Dollars

(\$1,000,000) per occurrence and in the aggregate with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all of Contractor's subcontractors. Such coverage must include all automotive equipment used in the performance of the Contract, both on and off any work site, and such coverage shall include non-ownership and hired cars (vehicles and equipment) coverage. Such insurance shall be endorsed to name the City, and its elected officials, officers, employees and agents as additional insured parties.

6.2 Requirements of Insurance.

6.2.1 Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

6.2.2 By naming the City as an additional insured on Contractor's insurance policy, the City is only securing protection from liabilities arising out of Contractor's negligence as per the applicable policy. The only insurance policy whereby the City will be listed as an additional insured shall be the Comprehensive General Liability and Comprehensive Automobile policies.

6.2.3 No policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.

6.2.4 Every policy of insurance shall provide that the City will receive notice no less than thirty (30) calendar days prior to any cancellation, termination, or a material change in such policy.

6.2.5 Proof of required insurance shall be maintained in all equipment and motor vehicles insured in accordance with the provisions of this Contract.

6.3 **Failure to Obtain or Maintain Insurance.** The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Contract. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Contract upon which the City may immediately terminate this Contract.

6.4 **Insurance Certificates.** Prior to commencement of the Services, the Contractor shall submit to the City certificates of insurance for all required insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section and its subsections shall be indicated on each certificate of insurance.

6.5 Additional Insurance Provisions.

6.5.1 Contractor will ensure that any and all policies of insurance procured hereunder shall provide for a waiver of subrogation against the City, and Contractor waives any

claim against the other arising in contract or tort which is covered by its insurance hereunder.

6.5.2 Contractor will additionally name the City's contractor providing oversight of Services on behalf of the City pursuant to Section 1.3 of this Contract as an additional insured on its policies for comprehensive general liability insurance and comprehensive automobile insurance, and shall provide certificates of insurance providing for same. At the time of execution of this Contract, CH2M Hill is the contractor for the City providing such oversight. City agrees to provide Contractor with at least thirty (30) days written notice in the event the City's designee for provision of oversight of Services is changed from CH2M Hill.

7.0 TERMINATION

7.1 **Immediate Termination.** Pursuant to O.C.G.A. § 36-60-13, this Contract will terminate immediately and absolutely if the City determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the City cannot fulfill its obligations under the Contract, which determination is at the City's sole discretion and shall be conclusive. Further, the City may terminate the Contract for any one or more of the following reasons effective immediately without advance notice:

7.1.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

7.1.2 The City determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;

7.1.3 The Contractor fails to comply with confidentiality laws or provisions; and/or

7.1.4 The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

7.2 **Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for the City to declare the Contractor in default of its obligations under the Contract:

7.2.1 The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform, to the City's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;

7.2.2 The City determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;

7.2.3 The Contractor fails to make substantial and timely progress toward performance of the Contract;

- 7.2.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the City reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- 7.2.5 The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;
- 7.2.6 The Contractor has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion; or
- 7.2.7 The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State, the City, or a third party.
- 7.3 **Notice of Default.** If there is a default event caused by the Contractor, the City shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the City's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the City may:
- (i) Immediately terminate the Contract without additional written notice; and/or
 - (ii) Procure substitute goods or services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor; and/or,
 - (iii) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.
- 7.4 **Termination for Convenience.** The City may terminate this Agreement for convenience at any time upon thirty (30) day written notice to the Contractor. In the event of a termination for convenience, Contractor shall take immediate steps to terminate work as quickly and effectively as possible and shall terminate all commitments to third-parties unless otherwise instructed by the City. Provided that no damages are due to the City for Contractor's failure to perform in accordance with this Agreement, the City shall pay Contractor for work performed to date in accordance with Section 2.0 herein. The City shall have no further liability to Contractor for such termination.
- 7.5 **Payment Limitation in Event of Termination.** In the event of termination of the Contract for any reason by the City, the City shall pay only those amounts, if any, due and owing to the Contractor for goods and services actually rendered up to and including the date of termination of the Contract and for which the City is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the City under the Contract in the event of termination. The City shall not be liable for any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead, project close-out costs, termination costs or other costs associated with the performance of the Contract.

7.6 **Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the City, the Contractor shall:

- (i) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the City may require;
- (ii) Immediately cease using and return to the City, any personal property or materials, whether tangible or intangible, provided by the City to the Contractor;
- (iii) Comply with the City's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;
- (iv) Cooperate in good faith with the City, its employees, agents and Contractors during the transition period between the notification of termination and the substitution of any replacement Contractor; and
- (v) Immediately return to the City any payments made by the City for goods and services that were not delivered or rendered by the Contractor.

8.0 INCLUSION OF DOCUMENTS

The RFP and Response, including any best and final offer, are incorporated in this Contract by reference and form an integral part of this agreement. In the event of a conflict in language between this Contract and the foregoing documents incorporated herein, the provisions and requirements set forth in this Contract shall govern; provided however, to the extent any of Contractor's obligations or duties set forth in the Proposal exceed the requirements provided within the RFP or this Contract, or the City finds any of the terms set forth in the Proposal more desirable, the terms set forth in the Proposal shall control. Subject to the foregoing, in the event of a conflict between the language in the RFP, as amended, and the Proposal, the language in the former shall govern.

9.0 PERFORMANCE AND PAYMENT BONDS

Prior to or at the time of execution of this Contract, the Contractor, as Principal, and a surety company listed in the Federal Register and licensed to write surety insurance in the State of Georgia, as surety, shall give a Contract Performance Bond and a Payment Bond, each in the amount of one hundred percent (100%) of the contract price for the use of all persons doing work or furnishing skills, tools, machinery, or materials under or for the purpose of the agreement, in accordance with the provisions of the law of the State of Georgia including, but not limited to O.C.G.A. §§ 32-4-119 and 36-91-21 et seq., as applicable. The life of these bonds shall extend through the life of this agreement including sixty (60) day maintenance period (where applicable) and a twelve-month warranty/guarantee period after the completions of work performed under this contract agreement.

10.0 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

11.0 COMPLIANCE WITH ALL LAWS AND LICENSES

The Contractor must obtain all necessary licenses and comply with local, state and federal requirements. The Contractor shall comply with all laws, rules and regulations of any governmental entity pertaining to its performance under this Agreement.

11.1 Federal Requirements.

11.1.1 Federal Compliance Regulations

Federal regulations apply to all City of Johns Creek contracts using Federal funds as a source for the solicitation of goods and services. Successful bidders must comply with the following Federal requirement as they apply to:

1. Equal Employment Opportunity – The Contractor shall not discriminate against any employee or applicant or employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
2. Reports - The submission of reports to the City on behalf of the U.S. Department of Housing and Urban Development as may be determined necessary for the activities covered by this contract, which is federally funded;
3. Patents - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive and irrevocable right to use, and to authorize others to use, for Federal Government purposes:
 - a. Any patent that shall result under this contract; and
 - b. Any patent rights to which the Contractor purchases ownership with grant support;
4. Copy rights - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
 - a. The copyright in any work developed under this contract; and
 - b. Any rights of copyright to which the Contractor purchases ownership with grant support.
5. Access to books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purposes of making audit, examination,

excerpts and transcriptions by Federal agencies, the Comptroller General of the United States, or any of their duly authorized representatives; and

6. Retention of all required records for three years after the City makes final payment and all other pending matters are closed.

11.2 **Georgia Security and Immigration Compliance Act.** Contractor agrees to comply with all applicable requirements of the Georgia Security and Immigration Compliance Act of 2006 as codified in O.C.G.A. §§ 13-10-90 and 13-10-91 and regulated in Chapter 300-10-1 of the Rules and Regulations of the State of Georgia, "Public Employers, Their Contractors and Subcontractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program," accessed at <http://www.dol.state.ga.us>, as further set forth in the certification attached as **Exhibit C**. Additionally, Contractor represents that it has complied with any and all requirements of § 50-36-1 prior to the submittal of the Proposal and execution of this Contract.

12.0 ASSIGNMENT AND SUBCONTRACTORS

The Contractor shall not assign or subcontract the whole or any part of this Contract without the City's prior written consent, except Contractor may subcontract a portion of the Services if same has been expressly provided for in the Proposal by providing the name of the subcontractor and the portion of Services being subcontracted. In the event subcontractors are utilized by Contractor for the performance of certain services hereunder, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Contract and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform services hereunder by Contractor shall perform such services in accordance with all terms and conditions of this Contract.

13.0 AMENDMENTS

No amendments to this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of the parties.

14.0 DRUG-FREE WORK PLACE

Contractor shall maintain a Drug Free Workplace pursuant to the federal Drug Free Workplace Act, as amended from time to time, and shall further ensure that its agents and subcontractors maintain a Drug Free Workplace pursuant to other applicable state laws and regulations. By execution of this Agreement, Contractor certifies that:

(1) a drug-free workplace will be provided for the Contractor's employees during the performance of this Agreement;

(2) each subcontractor hired by Contractor shall be required to ensure that the subcontractor's employees are provided a drug-free workplace; and

(3) Contractor, including its employees, agents and subcontractors, will not engage in any unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Agreement.

15.0 POLICY OF NON-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall not discriminate against any person in its operations, activities or delivery of services under this Contract and shall further ensure that Contractor's agents and/or subcontractors comply with same. Contractor, its agents and subcontractors shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any employee, applicant or person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for the provision or denial of employment or service delivery.

16.0 CONFLICTS OF INTEREST/COLLUSION/CONTINGENT FEES

- 16.1 Neither Contractor nor any of its officers, employees, agents or representatives shall have or hold any employment or contractual relationship that is antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Contract.
- 16.2 Neither Contractor nor any of its directors, officers, employees, agents or representatives shall obtain any kickbacks or benefits for itself, themselves or other clients as a result of any City purchases or transactions.
- 16.3 Contractor shall not collude with other City contract providers regarding City business or matters. Contractor shall not enter into any business relationships with other City contract providers regarding City business or matters, without the approval of the City Manager, which approval may be withheld at the City Manager's sole discretion.
- 16.4 Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, company, Contractor, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. Provided however, this provision does not encompass Contractor's ability to have hired or engaged consultants to assist in preparation of the proposal and delivery of the services hereunder. For the breach or violation of this provision, the City shall have the right to terminate the Contract without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- 16.5 Prior to the performance of Services, Contractor agrees that it will provide the City with a written oath from all officers, agents or other persons who may have acted on behalf of or represented Contractor in preparing its Proposal, which shall provide that such person did not cause or induce any other party from withdrawing a proposal in response to the RFP.

17.0 ADDITIONAL TERMS

The City shall not be bound by any terms and conditions included in any Contractor invoice, packaging, catalog, brochure, technical data sheet, or other document which attempts to impose any condition in variance with or in addition to the terms and conditions contained herein.

18.0 ANTITRUST ACTIONS

For good cause and as consideration for executing this Contract or placing this order, Contractor acting herein by and through its duly authorized agent hereby conveys, sells, assigns, and transfers to the City of Johns Creek all rights, title, and interest to and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of Georgia relating to the particular goods or services purchased or acquired by the City of Johns Creek pursuant hereto.

19.0 PUBLIC RECORDS

Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to the City, subject to the provision of O.C.G.A. §50-14-1 *et seq.*, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Contract by the City. Contractor agrees to retain all public records in accordance with the City's records retention and disposal policies, O.C.G.A. 50-18-92 *et. seq.* and the Georgia Administrative Code. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

20.0 REPORTING REQUIREMENTS AND AUDIT RIGHTS

Written status reports shall be submitted to the City on a regular basis (weekly/monthly, as directed by the City) providing, at a minimum, data or information regarding the Services delivered to the City during the previous period. Further, upon two (2) days prior notice, the City shall the right to inspect and audit any and all records (including, without limitation financial records) of Contractor that pertain to Contractor's performance of Services, fees or expenses invoiced to the City by Contractor, or any obligations imposed by this Contract.

21.0 OWNERSHIP OF DOCUMENTS

Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the City of Johns Creek upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the City. Other materials, statistical data derived from other clients and other client projects, software, methodology and proprietary work used or provided by the Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the City and may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under the Georgia Open Records Act, to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services.

22.0 USE OF CITY LOGO

To the extent requested by the City Manager, the City logo shall be displayed by Contractor on equipment and vehicles while being used in providing Services hereunder, in a format, size and color approved and provided by the City; provided however, the City logo shall not be used on any such equipment and vehicles when Contractor is not providing Services. All use of the City's logo shall be approved by the City Manager or his designee.

23.0 CONFIDENTIAL INFORMATION

23.1 **Access to Confidential Data.** The Contractor's employees, agents and subcontractors may have access to confidential data or information maintained by the City to the extent necessary to carry out the Contractor's responsibilities under the Contract. The Contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the City. If it is reasonably likely the Contractor will have access to the City's confidential information, then:

(i) The Contractor shall provide to the City a written description of the Contractor's policies and procedures to safeguard confidential information;

(ii) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;

(iii) The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and

(iv) The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract. The private or confidential data shall remain the property of the City at all times. Some services performed for the City may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Contract.

23.2 **No Dissemination of Confidential Data.** No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated, unless otherwise required by law, without the written consent of the City, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the City. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the City.

23.3 **Subpoena.** In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the City and cooperate with the City in any lawful effort to protect the confidential information.

23.4 **Reporting of Unauthorized Disclosure.** The Contractor shall immediately report to the City any unauthorized disclosure of confidential information.

23.5 **Survives Termination.** The Contractor's confidentiality obligation under the Contract shall survive termination of the Contract.

24.0 NOTICES

Any notice required or permitted by this Contract shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth

below or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail.

If to the City:

City Manager
City of Johns Creek
12000 Findley Road
Suite 400
Johns Creek, GA 30097

If to Contractor:

Georgia Management Agency, Inc.
d/b/a Roadworx
200 Bluff Oak Drive
Roswell, GA 30076
Attn: _____

With a copy to:

City Attorney
City of Johns Creek
12000 Findley Road
Suite 400
Johns Creek, GA 30097

25.0 GOVERNING LAW

This Contract shall be governed in all respects by the laws of the State of Georgia. The Superior Court of Fulton County, Georgia shall have exclusive jurisdiction to try disputes arising under or by virtue of this contract; provided however, if federal jurisdiction governs any such dispute, venue shall be in the United States District Court, Northern District of Georgia.

26.0 ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties with respect to the subject matter contained herein; subject to Section 8.0, all prior agreements, representations, statements, negotiations, and undertakings are suspended hereby. Neither party has relied on any representation, promise, or inducement not contained or otherwise incorporated herein.

27.0 SPECIAL TERMS AND CONDITIONS

(Attached are any special terms and conditions to this contract, if applicable:) NONE

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed by their duly authorized officers as of the day and year set forth next to each signature.

GEORGIA MANAGEMENT AGENCY, INC. D/B/A ROADWORX

By:

DATE

ATTEST

DATE

CITY OF JOHNS CREEK

By:

Mayor

DATE

By:

City Clerk

DATE

Approved as to form and legal
sufficiency subject to execution
by the parties:

By:

City Attorney

DATE

EXHIBIT A
SCOPE OF SERVICES

1. Traffic Signs Maintenance

1.1 General Performance.

- Contractor shall perform all construction and traffic maintenance work in accordance with Georgia Department of Transportation Standard Specifications for Construction of transportation Systems and other GDOT specifications as applicable.
- Contractor shall comply with all current State and Federal construction safety regulations, including OSHA regulations.
- Contractor shall comply with *Manual on Uniform Traffic Control Devices* (MUTCD, current edition) and the State of Georgia Department of Transportation standards for traffic control.
- Contractor shall submit a proposed Traffic Control Plan to the Public Works Director or his/ her designee before starting any work involving a lane or roadway closure, and no lane or roadway closure shall occur without the approval of the Public Works Director or his/her designee. All construction signs and devices will be in like new condition and meet the latest GDOT requirements. Further, all flaggers must be GDOT certified. Traffic control will include flagging and covering areas along the site area that may present safety issues with pedestrians. The Contractor must maintain a safe work zone for their employees, pedestrians and vehicular transportation.

1.2 Certifications.

Contractor shall provide the City with copies of CDL licenses, GDOT flagger certifications, IMSA certifications and any other required certifications or licenses.

1.3 Traffic Signs Maintenance Services.

Contractor shall perform the following traffic signs and traffic signs maintenance services:

- Provide sign maintenance services for traffic signs including installation, cleaning, reposting, and replacement; trimming foliage around signs and/

or the blocking of sight visibility of signs; and the removal of graffiti from signs and traffic signal cabinets.

- Repair or replace approximately 500 signs and 150 posts per year.
- Provide recommendations based on the MUTCD, current edition and on accepted traffic engineering standards and practices.
- Provide training for proper foliage trimming for all crew members (training will be conducted by the City).
- Provide labor and equipment coverage for a forty (40) hour concurrent work week with the exception of scope requirements and recognized holidays. Provide personnel to complete the tasks as described herein (all work shall conform to the MUTCD, current edition and Georgia Department of Transportation Standard Specifications, current edition).
- Provide crew(s) with the proper number of staff and equipment to perform traffic sign maintenance indentified in the scope and in assigned work orders. Adequate personnel must be provided to meet safety requirements at all times.
- Some of this work will necessitate after hours call out and/ or weekend work. Provide crews available for incidents, emergencies and weather related emergencies on a 24 hour on-call basis with a 2 hour response time.

1.4 Work Order Priority.

Contractor shall perform services in accordance with Work Orders provided by the City and pursuant to an established work order priority schedule. After hours and emergency work orders may be authorized verbally and followed up with a written work order. The following priority identifiers shall have the corresponding meaning:

- Priority 1: Complete red series sign requests within **2 hours** of notification; complete other Priority 1 requests within 24 hours.
- Priority 2: Complete within 72 hours.
- Priority 3: Complete within 10 business days.
- Priority 4: Complete within scheduled maintenance period.

1.5 Utility Locates.

Contractor shall stake proposed sign locators and request and confirm utility locates as required by Georgia law.

1.6 Sign Materials.

Contractor shall provide an inventory of certain common signs on site for immediate installation, such as STOP, YIELD, SPEED LIMIT, etc. All signs shall be made with High Intensity Prismatic grade material (HIP). All street name signs shall conform to City of Johns Creek sign standards. Provide all sign materials and posts and ensure compliance with the MUTCD (current edition) and current City standards. All materials shall be listed by the MUTCD (current edition) sign codes and shall be standard roadway sizes.

1.7 Traffic Sign Equipment.

Contractor shall provide equipment as required (for normal operations and emergency operations) to deliver the described services. Contractor shall maintain equipment in a clean and professional condition. Contractor shall provide a truck of sufficient size that is designed to hold signs in an upright position to prevent signs from being scratched or damaged. Further, Contractor shall provide equipment to meet a 2 hour maximum response time for emergency callouts.

2. Traffic Signals Maintenance

2.1 General Performance.

- Contractor shall perform all construction and traffic maintenance work in accordance with Georgia Department of Transportation Standard Specifications for Construction of transportation Systems and other GDOT specifications as applicable.
- Contractor shall comply with all current State and Federal construction safety regulations, including OSHA regulations.
- Contractor shall comply with *Manual on Uniform Traffic Control Devices* (MUTCD, current edition) and the State of Georgia Department of Transportation standards for traffic control.
- Contractor shall submit a proposed Traffic Control Plan to the Public Works Director or his/ her designee before starting any work involving a lane or roadway closure, and no lane or roadway closure shall occur

without the approval of the Public Works Director or his/her designee. All construction signs and devices will be in like new condition and meet the latest GDOT requirements. Further, all flaggers must be GDOT certified. Traffic control will include flagging and covering areas along the site area that may present safety issues with pedestrians. The Contractor must maintain a safe work zone for their employees, pedestrians and vehicular transportation. When a water source is required, Contractor shall secure a water meter from Fulton County. All water used on the project must be from a metered source.

2.2 Certifications.

Contractor shall provide the City with copies of CDL licenses, GDOT flagger certifications, IMSA certifications and any other required certifications or licenses.

2.3 Traffic Signals Maintenance Services.

Contractor shall perform the following traffic signals maintenance services:

- Provide operational oversight and maintenance of the City's 58 stop-and-go traffic signals, 24 school flashers and 2 intersection beacons. Maintenance will include, but will not be limited to: traffic signal operation; traffic signal timing; replacement of bulbs, LED inserts, loops, controllers, signal heads, audible signals, crosswalk signals and battery backups which require replacement due to routine wear and tear; repairing, adjusting and aligning signal heads for proper vehicular and pedestrian traffic; cleaning inside and outside control cabinets, removing dust and foreign material and changing the air filter and thermostat as needed; cleaning and adjusting video cameras and detectors; maintaining and cutting loops; maintaining ITS devices and fiber optic cable.
- Provide personnel to complete the tasks as described below. All work shall conform to the MUTCD, current edition, Georgia Department of Transportation Standard Specifications, current edition and the IMSA recommendations.
- Provide at least 2 Level II IMSA certified traffic signal technicians.
- Provide crew(s) with the proper number of staff and equipment to perform traffic signal maintenance identified in the scope and in assigned work orders. Adequate personnel must be provided to meet safety requirements at all times.

- Some of this work will necessitate after hours call out and/ or weekend work. Provide crews available for incidents, emergencies and weather related emergencies on a 24 hour on-call basis with a 2 hour response time.

2.4 Work Order Priority.

Contractor shall perform services in accordance with Work Orders provided by the City and pursuant to an established work order priority schedule. After hours and emergency work orders may be authorized verbally and followed up with a written work order. The following priority identifiers shall have the corresponding meaning:

- Priority 1: Complete within 24 hours.
- Priority 2: Complete within 72 hours.
- Priority 3: Complete within 10 business days.
- Priority 4: Complete within scheduled maintenance period.

2.5 Signal and Cabinet Maintenance.

Contractor shall inspect and clean traffic signal cabinets (as per maintenance checklist to be provided) at least once per year.

2.6 Utility Locates.

Contractor shall stake proposed signal pole locations, required by Georgia law. Contractor shall also locate signal and ITS utilities as requested or otherwise required.

2.7 Traffic Signal Materials.

Contractor shall provide an inventory on site sufficient to build a complete 8-phase signalized intersection. Materials to include signal poles, signal heads, cabinet, controller and span wire.

2.8 Traffic Signal Equipment.

Contractor shall provide equipment and vehicles as required (for normal operations and emergency operations) to deliver the described services. Contractor shall maintain equipment in a clean and professional condition.

EXHIBIT B
FINANCIAL PROPOSAL

EXHIBIT C

IMMIGRATION AND SECURITY FORM

**IMMIGRATION AND SECURITY FORM
CONTRACTOR AFFIDAVIT AND AGREEMENT**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Johns Creek has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 989-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the City of Johns Creek, contractor will secure from such subcontractors(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or substantially similar form. Contractor further agrees to main records of such compliance and provide a copy of each such verification to the City of Johns Creek at the time of the subcontractor(s) is retained to perform such service.

EEV / Basic Pilot Program* User Identification Number

BY: Authorized Officer or Agent
(Contractor Name)

Date

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON
THIS _____ DAY OF _____ 201____

Notary Public

My Commission Expires:_____

*As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the “EEV/ Basic Pilot Program” operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

(End of Form)



AGENDA REPORT

To: Honorable Mayor and City Council Members
From: Tom Henrikson, Senior Contracts Manager
By: John Kachmar, City Manager
Date: November 4, 2010
Agenda: November 8, 2010 WORK SESSION – Agenda Item: Review of Contracts for Pavement Markings –**MOVED TO 11-29-2010 COUNCIL AGENDA**

Recommendation: Award contract for \$117,175.00 to Peek Paving for the maintenance of Pavement Markings.

Background: The City decided to contract for service delivery directly as opposed to the previous process of having the services provided through a contract with CH2M HILL.

Review/Description: A pre-bid conference was held on October 21, 2010. Based on the evaluation criteria set forth in the RFP, the evaluation committee recommended awarding the bid to Peek Paving who submitted the lowest bid and met all the requirements of the RFP.

Financial Impact: The City is required to fund the annual maintenance contract costs of \$117,175.00

Alternative: Not award the bid.

Concurrent Review: John Kachmar, City Manager
John Henderson, Purchasing Manager
Scott Hastey, Assistant City Attorney Legal

Attachments: Letter of recommendation from Purchasing Manager



MEMORANDUM

Date: November 4, 2010

To: Pavement Markings RFP Workfile

From: John T. Henderson, CPPB
Purchasing Manager

Re: RFP #10-301-3

The above reference Request for Proposals (RFP) was released on October 13, 2010 with a due date of November 3, 2010 at 2:00PM. A pre-bid conference was held on October 21, 2010 for questions/answers by the evaluation committee. The following submittals were received and evaluated by the evaluation committee on November 4, 2010:

Peek Paving
Wildcat Paving

The evaluation committee met today and ranked/scored each submittal. Individual score sheets are incorporated herein to the work-file for reference. Based on the evaluation criteria set forth in the RFP it is the unanimous decision of the evaluation committee to make recommendation for award of the above reference RFP to Peek Paving as the submittal that met all of the requirements and is in the best interest of the City.

Their cost for the annual maintenance contract is \$117,175.

This project needs to go before the Mayor and City Council work session scheduled for November 8, 2010 for approval.

Effective Date: _____

Expiration Date: _____



**CONTRACT AGREEMENT
FOR THE PROVISION OF
PAVEMENT MARKING MAINTENANCE SERVICES
(REQUEST FOR PROPOSAL NO. 10-307-3)**

This Agreement ("Contract") is made and entered into this ____ day of _____, 2010, by and between the **CITY OF JOHNS CREEK, GEORGIA**, a municipal corporation of the State of Georgia (the "City"), and **PEEK PAVEMENT MARKING, LLC**, a Georgia limited liability company with its principal office located at 4600 Peek Industrial Drive, Columbus, Georgia 31908 ("Contractor"); heretofore referred to jointly as the "Parties."

WHEREAS, the City is charged with the responsibility for the establishment of contracts for the acquisition of goods, materials, supplies and equipment, and services by the various departments of the City of Johns Creek; and

WHEREAS, the City has caused Request for Proposal (RFP) No.10-307-3, Pavement Markings Maintenance, to be issued soliciting proposals from qualified Contractors to furnish all items, labor services, materials and appurtenances called for within such proposal; and

WHEREAS, thereafter the City issued Addendum No. 1 to RFP No. 10-307-3 (RFP No. 10-307-3, as amended, referred to hereinafter as "RFP No. 10-307-3" or "RFP"); and

WHEREAS, the contractor selected pursuant to RFP No. 10-307-3 is required to provide the services as called for in the specifications; and

WHEREAS, the Contractor submitted a Proposal in response to RFP No. 10-307-3 ("Proposal"); and

WHEREAS, the Contractor's submittal was determined by the City to be the proposal most advantageous to the City; and

WHEREAS, the City Council desires to award the contract for the services to be provided pursuant to the RFP to Contractor.

NOW THEREFORE, in consideration of the foregoing recitals, the sums hereinafter set forth and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1.0 SCOPE OF SERVICES

- 1.1 **Services.** The Contractor has agreed and by these presents does agree with the City to furnish all equipment, tools, materials, skill, labor of every description, and all things necessary to carry out and complete in a good, firm, substantial and workmanlike manner the services set forth in the Scope of Services, which is attached hereto and incorporated herein as **Exhibit A**, in accordance with the terms of this Contract (the “Services”). The Services shall be performed in strict conformity with the specifications provided for in the RFP and Proposal, which shall form an essential part of this Contract. In addition to the foregoing, subject to Section 8.0 hereof, the following terms and conditions, amendments, and other documents are incorporated by reference and made a part of the terms and conditions of this Contract as is fully set out herein:

- **RFP No. 10-307-3, as amended (RFP)**
- **Contractor’s Proposal in response to RFP No. 10-307-3 (Proposal)**

- 1.2 **Time for Performance.** During the term of this Contract, work orders shall be submitted to Contractor by the City, or its designee, requesting the performance of certain Services by Contractor (“Work Orders”). Services are required to be performed within the periods of time set forth in the Work Order or pursuant to the work order priority schedule (See Exhibit A), or as otherwise provided in Exhibit A, the RFP and/or the Proposal; provided however, in the event the period of time for the performance of any service is not set forth in the Work Order, Exhibit A, the RFP or the Proposal, the City will determine the basic period of performance for the completion of any service and notify Contractor of the same via written notice. If no specific period for the completion Services is set forth in writing, such time period shall be a reasonable period of time based upon the nature of the activity. If the completion of this Contract is delayed by actions of the City, then and in such event the time of completion of this Contract shall be extended for such additional time within which to complete the performance of the Contract as is required by such delay. This Contract may be extended by mutual consent of both the City and the Contractor for reasons of additional time, additional services and/or additional areas of work.

- 1.3 **City’s Designee for Oversight of Performance of Services.** Contractor expressly acknowledges and agrees that the City may designate an independent contractor of the City to provide oversight of Contractor’s performance of Services. At the time of execution of this Agreement, CH2M Hill, Inc., a Florida corporation (“CH2M Hill”), has been contracted with by the City to provide certain professional services for the City, including providing oversight of the Services to be performed by Contractor herein. City agrees to provide Contractor with at least thirty (30) days written notice in the event the City’s designee for provision of oversight of Services is changed from CH2M Hill.

2.0 COMPENSATION

- 2.1. **Fee.** Contractor shall be paid for the performance of Services during the term of this Contract in accordance with the rates and prices set forth in the Proposal (See Financial Proposal, Exhibit B).
- 2.2 **Pricing.** Compensation for the performance of any Services shall be in accordance with the rates and prices offered by Contractor and listed on the attached Financial Proposal, a copy of which is attached hereto and incorporated herein as Exhibit “B”, and shall be

firm throughout the term of this Contract. Unless clearly stated otherwise herein, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties.

- 2.3 **Invoices.** If applicable, and unless the RFP provides otherwise, the Contractor shall submit, on a monthly basis (or, if applicable, regularly on the periodic basis set forth in the RFP), an invoice for the Services provided to the City under the Contract at the billing address specified in the RFP or as provided herein. The invoice shall comply with all applicable rules concerning payment of such claims. The City shall pay all approved invoices in arrears and in accordance with applicable provisions of City law. Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the City for any goods or services provided by or on behalf of the Contractor under the Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Contract. Standard payment terms: Net-30.
- 2.4 **Delay of Payment Due to Contractor's Failure; City's Right to Set-Off.** If the City in good faith determines that the Contractor has failed to perform or deliver any service or product as required by the Contract, the Contractor shall not be entitled to any compensation under the Contract until such service or product is performed or delivered. In this event, the City may withhold that portion of the Contractor's compensation which represents payment for services or products that were not performed or delivered. To the extent that the Contractor's failure to perform or deliver in a timely manner causes the City to incur costs, the City may deduct or set off the amount of such incurred costs from any amounts payable to Contractor. The City's authority to deduct such incurred costs shall not in any way affect the City's authority to terminate the Contract.
- 2.5 **Set-Off Against Sums Owed by the Contractor.** In the event that the Contractor owes the City any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, the City may set off the sum owed to the City against any sum owed by the City to the Contractor in the City's sole discretion.
- 3.0 **TERM**
- 3.1 **Term.** Pursuant to O.C.G.A. § 36-60-13, this Contract is for a term of one (1) year commencing December 1, 2010, and terminating November 30, 2011 (the "initial term") without further obligation on the part of either party other than outstanding obligations incurred prior to the expiration of such term.
- 3.2 **Contract Renewal.** The City shall have the option, at its sole discretion, to renew the Contract for up to four (4) successive one (1) year terms on a year-to-year basis by giving the Contractor written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term and requesting Contractor's written consent for renewal of the Contract. Renewal will depend upon the best interests of the City, funding, and Contractor's performance. Renewal will be accomplished through the issuance of a Notice of Award Amendment. Upon the City's election to renew any part of this Contract, Contractor shall remain obligated to perform in strict accordance with this Contract unless otherwise agreed by the City and the Contractor.
- 3.3 **Contract Extension.** In the event that this Contract shall terminate or be likely to terminate prior to the making of an award for a new contract for similar services, the City

may, with the written consent of Contractor, extend this Contract for such period as may be necessary to ensure the City continuing services.

4.0 INDEPENDENT CONTRACTOR

- 4.1 **Independent Contractor Status.** Contractor is and shall remain an independent contractor; not an employee, agent or servant of the City, and Contractor shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, or employer/employee relationship with the City. Services provided by Contractor shall be by employees, agents or subcontractors of Contractor and subject to supervision by Contractor, and not as officers or employees of City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, and other similar administrative procedures applicable to services rendered under this Agreement shall be the obligation of Contractor.
- 4.2 **Liability for Employment Related Compensation.** The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, sub-contractors, agents, volunteers or representatives, including coverage or benefits related but not limited to local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation insurance; disability, injury, or health insurance; professional liability insurance; errors and omissions insurance; or retirement account contributions in regards to the Contractor provision of Services under this Contract. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds or retirement accounts, insurance premiums or payments, workers compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever. Pursuant to Section 5.0, in the event City is demanded or called upon to assume any such liabilities, Contractor shall indemnify the City for any and all damages and expenses, including legal fees, incurred as a result thereof.
- 4.2 **Licenses, Registrations, Certifications and Permits.** The Contractor shall be responsible for obtaining and maintaining in a valid status, all licenses, registrations, certifications and permits necessary to perform the Services as required by law. Contractor represents to the City that the Contractor and its employees are properly licensed and/or registered within the State of Georgia for the performance of the Services required herein, provided such licensure and/or registration is required by applicable law. Contractor shall provide copies of any such licenses, certifications or permits to the City.
- 4.3 **No Agency.** Neither the City nor the Contractor has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise mutually agreed to in writing. The Contractor agrees not to represent itself as the City's agent for any purpose to any party or to allow any employee of the Contractor to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. The Contractor shall assume full liability for any contracts or agreements the Contractor enters into on behalf of the City

without the express knowledge and prior written consent of the City.

5.0 INDEMNIFICATION

The Contractor agrees to indemnify, hold harmless and defend the City, its officers, employees and agents from and against any and all liabilities, suits, actions, legal proceedings, claims, demands, damages, costs and expenses (including attorney's fees)("Claims") to the extent related to or arising out of Contractor's breach of any of the representations and warranties provided herein, Contractor's breach of any of the terms of this Contract, or any negligent or intentional act or omission of the Contractor, its agents, employees, or subcontractors, except for any Claims that arise from the City's sole negligence.

6.0 INSURANCE

6.1 Insurance Generally. The Contractor shall obtain and shall continuously maintain during the term of this Contract insurance of the kind and in the minimum amounts specified as follows:

6.1.1 Statutory Worker's Compensation and Employers Liability Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by Georgia law. If Contractor is self-insured, Contractor shall additionally provide the City with a certificate from the Georgia Board of Workers' Compensation stating that the Contractor qualifies to pay its own workers' compensation claims.

6.1.2 Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) per occurrence and in the aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City, and its elected officials, officers, employees and agents as additional insured parties.

6.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than of One Million Dollars (\$1,000,000) per occurrence and in the aggregate with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all of Contractor's subcontractors. Such coverage must include all automotive equipment used in the performance of the Contract, both on and off any work site, and such coverage shall include non-ownership and hired cars (vehicles and equipment) coverage. Such insurance shall be endorsed to name the City, and its elected officials, officers, employees and agents as additional insured parties.

6.2 Requirements of Insurance.

6.2.1 Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the

Contractor.

6.2.2 By naming the City as an additional insured on Contractor's insurance policy, the City is only securing protection from liabilities arising out of Contractor's negligence as per the applicable policy. The only insurance policy whereby the City will be listed as an additional insured shall be the Comprehensive General Liability and Comprehensive Automobile policies.

6.2.3 No policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.

6.2.4 Every policy of insurance shall provide that the City will receive notice no less than thirty (30) calendar days prior to any cancellation, termination, or a material change in such policy.

6.2.5 Proof of required insurance shall be maintained in all equipment and motor vehicles insured in accordance with the provisions of this Contract.

6.3 **Failure to Obtain or Maintain Insurance.** The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Contract. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Contract upon which the City may immediately terminate this Contract.

6.4 **Insurance Certificates.** Prior to commencement of the Services, the Contractor shall submit to the City certificates of insurance for all required insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section and its subsections shall be indicated on each certificate of insurance.

6.5 **Additional Insurance Provisions.**

6.5.1 Contractor will ensure that any and all policies of insurance procured hereunder shall provide for a waiver of subrogation against the City, and Contractor waives any claim against the other arising in contract or tort which is covered by its insurance hereunder.

6.5.2 Contractor will additionally name the City's contractor providing oversight of Services on behalf of the City pursuant to Section 1.3 of this Contract as an additional insured on its policies for comprehensive general liability insurance and comprehensive automobile insurance, and shall provide certificates of insurance providing for same. At the time of execution of this Contract, CH2M Hill is the contractor for the City providing such oversight. City agrees to provide Contractor with at least thirty (30) days written notice in the event the City's designee for provision of oversight of Services is changed from CH2M Hill.

7.0 TERMINATION

- 7.1 Immediate Termination.** Pursuant to O.C.G.A. § 36-60-13, this Contract will terminate immediately and absolutely if the City determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the City cannot fulfill its obligations under the Contract, which determination is at the City's sole discretion and shall be conclusive. Further, the City may terminate the Contract for any one or more of the following reasons effective immediately without advance notice:

7.1.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

7.1.2 The City determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;

7.1.3 The Contractor fails to comply with confidentiality laws or provisions; and/or

7.1.4 The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

- 7.2 Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for the City to declare the Contractor in default of its obligations under the Contract:

7.2.1 The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform, to the City's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;

7.2.2 The City determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;

7.2.3 The Contractor fails to make substantial and timely progress toward performance of the Contract;

7.2.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the City reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

7.2.5 The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;

7.2.6 The Contractor has engaged in conduct that has or may expose the City to

liability, as determined in the City's sole discretion; or

7.2.7 The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State, the City, or a third party.

7.3 **Notice of Default.** If there is a default event caused by the Contractor, the City shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the City's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the City may:

(i) Immediately terminate the Contract without additional written notice; and/or

(ii) Procure substitute goods or services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor; and/or,

(iii) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

7.4 **Termination for Convenience.** The City may terminate this Agreement for convenience at any time upon thirty (30) day written notice to the Contractor. In the event of a termination for convenience, Contractor shall take immediate steps to terminate work as quickly and effectively as possible and shall terminate all commitments to third-parties unless otherwise instructed by the City. Provided that no damages are due to the City for Contractor's failure to perform in accordance with this Agreement, the City shall pay Contractor for work performed to date in accordance with Section 2.0 herein. The City shall have no further liability to Contractor for such termination.

7.5 **Payment Limitation in Event of Termination.** In the event of termination of the Contract for any reason by the City, the City shall pay only those amounts, if any, due and owing to the Contractor for goods and services actually rendered up to and including the date of termination of the Contract and for which the City is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the City under the Contract in the event of termination. The City shall not be liable for any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead, project close-out costs, termination costs or other costs associated with the performance of the Contract.

7.6 **Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the City, the Contractor shall:

(i) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the City may require;

(ii) Immediately cease using and return to the City, any personal property or materials, whether tangible or intangible, provided by the City to the Contractor;

- (iii) Comply with the City's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;
- (iv) Cooperate in good faith with the City, its employees, agents and Contractors during the transition period between the notification of termination and the substitution of any replacement Contractor; and
- (v) Immediately return to the City any payments made by the City for goods and services that were not delivered or rendered by the Contractor.

8.0 INCLUSION OF DOCUMENTS

The RFP and Response, including any best and final offer, are incorporated in this Contract by reference and form an integral part of this agreement. In the event of a conflict in language between this Contract and the foregoing documents incorporated herein, the provisions and requirements set forth in this Contract shall govern; provided however, to the extent any of Contractor's obligations or duties set forth in the Proposal exceed the requirements provided within the RFP or this Contract, or the City finds any of the terms set forth in the Proposal more desirable, the terms set forth in the Proposal shall control. Subject to the foregoing, in the event of a conflict between the language in the RFP, as amended, and the Proposal, the language in the former shall govern.

9.0 PERFORMANCE AND PAYMENT BONDS

Prior to or at the time of execution of this Contract, the Contractor, as Principal, and a surety company listed in the Federal Register and licensed to write surety insurance in the State of Georgia, as surety, shall give a Contract Performance Bond and a Payment Bond, each in the amount of one hundred percent (100%) of the contract price for the use of all persons doing work or furnishing skills, tools, machinery, or materials under or for the purpose of the agreement, in accordance with the provisions of the law of the State of Georgia including, but not limited to O.C.G.A. §§ 32-4-119 and 36-91-21 et seq., as applicable. The life of these bonds shall extend through the life of this agreement including sixty (60) day maintenance period (where applicable) and a twelve-month warranty/guarantee period after the completions of work performed under this contract agreement.

10.0 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

11.0 COMPLIANCE WITH ALL LAWS AND LICENSES

The Contractor must obtain all necessary licenses and comply with local, state and federal requirements. The Contractor shall comply with all laws, rules and regulations of any governmental entity pertaining to its performance under this Agreement.

11.1 Federal Requirements.

11.1.1 Federal Compliance Regulations

Federal regulations apply to all City of Johns Creek contracts using Federal funds as a

source for the solicitation of goods and services. Successful bidders must comply with the following Federal requirement as they apply to:

1. Equal Employment Opportunity – The Contractor shall not discriminate against any employee or applicant or employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
2. Reports - The submission of reports to the City on behalf of the U.S. Department of Housing and Urban Development as may be determined necessary for the activities covered by this contract, which is federally funded;
3. Patents - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive and irrevocable right to use, and to authorize others to use, for Federal Government purposes:
 - a. Any patent that shall result under this contract; and
 - b. Any patent rights to which the Contractor purchases ownership with grant support;
4. Copy rights - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
 - a. The copyright in any work developed under this contract; and
 - b. Any rights of copyright to which the Contractor purchases ownership with grant support.
5. Access to books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purposes of making audit, examination, excerpts and transcriptions by Federal agencies, the Comptroller General of the United States, or any of their duly authorized representatives; and
6. Retention of all required records for three years after the City makes final payment and all other pending matters are closed.

11.2 **Georgia Security and Immigration Compliance Act.** Contractor agrees to comply with all applicable requirements of the Georgia Security and Immigration Compliance Act of 2006 as codified in O.C.G.A. §§ 13-10-90 and 13-10-91 and regulated in Chapter 300-10-1 of the Rules and Regulations of the State of Georgia, “Public Employers, Their Contractors and Subcontractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program,” accessed at <http://www.dol.state.ga.us>, as further set forth in the certification attached as **Exhibit C**. Additionally, Contractor

represents that it has complied with any and all requirements of § 50-36-1 prior to the submittal of the Proposal and execution of this Contract.

12.0 ASSIGNMENT AND SUBCONTRACTORS

The Contractor shall not assign or subcontract the whole or any part of this Contract without the City's prior written consent, except Contractor may subcontract a portion of the Services if same has been expressly provided for in the Proposal by providing the name of the subcontractor and the portion of Services being subcontracted. In the event subcontractors are utilized by Contractor for the performance of certain services hereunder, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Contract and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform services hereunder by Contractor shall perform such services in accordance with all terms and conditions of this Contract.

13.0 AMENDMENTS

No amendments to this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of the parties.

14.0 DRUG-FREE WORK PLACE

Contractor shall maintain a Drug Free Workplace pursuant to the federal Drug Free Workplace Act, as amended from time to time, and shall further ensure that its agents and subcontractors maintain a Drug Free Workplace pursuant to other applicable state laws and regulations. By execution of this Agreement, Contractor certifies that:

- (1) a drug-free workplace will be provided for the Contractor's employees during the performance of this Agreement;
- (2) each subcontractor hired by Contractor shall be required to ensure that the subcontractor's employees are provided a drug-free workplace; and
- (3) Contractor, including its employees, agents and subcontractors, will not engage in any unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Agreement.

15.0 POLICY OF NON-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall not discriminate against any person in its operations, activities or delivery of services under this Contract and shall further ensure that Contractor's agents and/or subcontractors comply with same. Contractor, its agents and subcontractors shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any employee, applicant or person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for the provision or denial of employment or service delivery.

16.0 CONFLICTS OF INTEREST/COLLUSION/CONTINGENT FEES

- 16.1 Neither Contractor nor any of its officers, employees, agents or representatives shall have or hold any employment or contractual relationship that is antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Contract.
- 16.2 Neither Contractor nor any of its directors, officers, employees, agents or representatives shall obtain any kickbacks or benefits for itself, themselves or other clients as a result of any City purchases or transactions.
- 16.3 Contractor shall not collude with other City contract providers regarding City business or matters. Contractor shall not enter into any business relationships with other City contract providers regarding City business or matters, without the approval of the City Manager, which approval may be withheld at the City Manager's sole discretion.
- 16.4 Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, company, Contractor, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. Provided however, this provision does not encompass Contractor's ability to have hired or engaged consultants to assist in preparation of the proposal and delivery of the services hereunder. For the breach or violation of this provision, the City shall have the right to terminate the Contract without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- 16.5 Prior to the performance of Services, Contractor agrees that it will provide the City with a written oath from all officers, agents or other persons who may have acted on behalf of or represented Contractor in preparing its Proposal, which shall provide that such person did not cause or induce any other party from withdrawing a proposal in response to the RFP.

17.0 ADDITIONAL TERMS

The City shall not be bound by any terms and conditions included in any Contractor invoice, packaging, catalog, brochure, technical data sheet, or other document which attempts to impose any condition in variance with or in addition to the terms and conditions contained herein.

18.0 ANTITRUST ACTIONS

For good cause and as consideration for executing this Contract or placing this order, Contractor acting herein by and through its duly authorized agent hereby conveys, sells, assigns, and transfers to the City of Johns Creek all rights, title, and interest to and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of Georgia relating to the particular goods or services purchased or acquired by the City of Johns Creek pursuant hereto.

19.0 PUBLIC RECORDS

Contractor understands that the public shall have access, at all reasonable times, to all documents

and information pertaining to the City, subject to the provision of O.C.G.A. §50-14-1 *et seq.*, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Contract by the City. Contractor agrees to retain all public records in accordance with the City's records retention and disposal policies, O.C.G.A. 50-18-92 *et. seq.* and the Georgia Administrative Code. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

20.0 REPORTING REQUIREMENTS AND AUDIT RIGHTS

Written status reports shall be submitted to the City on a regular basis (weekly/monthly, as directed by the City) providing, at a minimum, data or information regarding the Services delivered to the City during the previous period. Further, upon two (2) days prior notice, the City shall the right to inspect and audit any and all records (including, without limitation financial records) of Contractor that pertain to Contractor's performance of Services, fees or expenses invoiced to the City by Contractor, or any obligations imposed by this Contract.

21.0 OWNERSHIP OF DOCUMENTS

Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the City of Johns Creek upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the City. Other materials, statistical data derived from other clients and other client projects, software, methodology and proprietary work used or provided by the Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the City and may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under the Georgia Open Records Act, to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services.

22.0 USE OF CITY LOGO

To the extent requested by the City Manager, the City logo shall be displayed by Contractor on equipment and vehicles while being used in providing Services hereunder, in a format, size and color approved and provided by the City; provided however, the City logo shall not be used on any such equipment and vehicles when Contractor is not providing Services. All use of the City's logo shall be approved by the City Manager or his designee.

23.0 CONFIDENTIAL INFORMATION

23.1 Access to Confidential Data. The Contractor's employees, agents and subcontractors may have access to confidential data or information maintained by the City to the extent necessary to carry out the Contractor's responsibilities under the Contract. The Contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the City. If it is reasonably likely the Contractor will have access to the City's confidential information, then:

- (i) The Contractor shall provide to the City a written description of the Contractor's policies and procedures to safeguard confidential information;

(ii) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;

(iii) The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and

(iv) The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract. The private or confidential data shall remain the property of the City at all times. Some services performed for the City may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Contract.

23.2 **No Dissemination of Confidential Data.** No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated, unless otherwise required by law, without the written consent of the City, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the City. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the City.

23.3 **Subpoena.** In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the City and cooperate with the City in any lawful effort to protect the confidential information.

23.4 **Reporting of Unauthorized Disclosure.** The Contractor shall immediately report to the City any unauthorized disclosure of confidential information.

23.5 **Survives Termination.** The Contractor's confidentiality obligation under the Contract shall survive termination of the Contract.

24.0 NOTICES

Any notice required or permitted by this Contract shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail.

If to the City:

City Manager
City of Johns Creek
12000 Findley Road
Suite 400
Johns Creek, GA 30097

If to Contractor:

Peek Pavement Marking, LLC
4600 Peek Industrial Drive
P.O. Box 7337
Columbus, GA 31908
Attn: _____

With a copy to:

City Attorney
City of Johns Creek
12000 Findley Road
Suite 400
Johns Creek, GA 30097

25.0 GOVERNING LAW

This Contract shall be governed in all respects by the laws of the State of Georgia. The Superior Court of Fulton County, Georgia shall have exclusive jurisdiction to try disputes arising under or by virtue of this contract; provided however, if federal jurisdiction governs any such dispute, venue shall be in the United States District Court, Northern District of Georgia.

26.0 ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties with respect to the subject matter contained herein; subject to Section 8.0, all prior agreements, representations, statements, negotiations, and undertakings are suspended hereby. Neither party has relied on any representation, promise, or inducement not contained or otherwise incorporated herein.

27.0 SPECIAL TERMS AND CONDITIONS

(Attached are any special terms and conditions to this contract, if applicable:) NONE

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed by their duly authorized officers as of the day and year set forth next to each signature.

PEEK PAVEMENT MARKING, LLC

By:

DATE

ATTEST

DATE

CITY OF JOHNS CREEK

By:
Mayor

DATE

By:
City Clerk

DATE

Approved as to form and legal
sufficiency subject to execution
by the parties:

By:
City Attorney

DATE

EXHIBIT A
SCOPE OF SERVICES

1. General Performance.

- Contractor shall perform all construction and traffic maintenance work in accordance with Georgia Department of Transportation Standard Specifications for Construction of transportation Systems and other GDOT specifications as applicable.
- Contractor shall comply with all current State and Federal construction safety regulations, including OSHA regulations.
- Contractor shall comply with *Manual on Uniform Traffic Control Devices* (MUTCD, current edition) and the State of Georgia Department of Transportation standards for traffic control.
- Contractor shall submit a proposed Traffic Control Plan to the Public Works Director or his/ her designee before starting any work involving a lane or roadway closure, and no lane or roadway closure shall occur without the approval of the Public Works Director or his/her designee. All construction signs and devices will be in like new condition and meet the latest GDOT requirements. Further, all flaggers must be GDOT certified. Traffic control will include flagging and covering areas along the site area that may present safety issues with pedestrians. The Contractor must maintain a safe work zone for their employees, pedestrians and vehicular transportation. When a water source is required, Contractor shall secure a water meter from Fulton County. All water used on the project must be from a metered source.

2. Certifications.

Contractor shall provide the City with copies of CDL licenses, GDOT flagger certifications, IMSA certifications and any other required certifications or licenses.

3. Pavement Markings Services.

Contractor shall perform the following pavement markings services:

- Provide services, materials and equipment to properly install long line pavement markings, short line pavement markings and raised pavement markers (RPMs). Most of this work should be completed between the hours of 9AM to 4PM, Monday through Friday. Some exceptions may be made in instances where traffic volume would warrant night work.

- Provide personnel, vehicles, material and work zone safety equipment as necessary to complete marking installation in accordance with the specifications and work zone requirements of the MUTCD, current edition and to prevent tracking of pavement markings.
- Complete all striping when the pavement temperature is a minimum of 50 degrees Fahrenheit and rising and when the pavement has been dry for a minimum of 24 hours. Long striping is typically installed twice per year (in April and in July). Short striping shall be performed upon request and completed within 60 days of initial request.
- Use GDOT approved thermoplastic material or GDOT approved paint depending upon which material is specified.

Short Line Markings. Contractor shall install short line markings as directed (approximately 10 times per year), including centerline and edge line markings less than 1,500 feet, crosswalks, stop bars, raised pavement markers (RPMs), turn arrows, school zone lettering and yield markings (sharks teeth). Eradication of pavement markings is also included. Contractor shall install premarkings as directed. Estimated quantities are as follows:

<u>Type of Material</u>	<u>Color</u>	<u>Estimated Quantity</u>
5" thermoplastic	white	10,000 LF
5" thermoplastic	yellow	10,000 LF
8" thermoplastic	white	5,000 LF
10" thermoplastic	white	500 LF
12" thermoplastic	white	1,000 LF
12" thermoplastic	yellow	1,000 LF
5" paint	white	500 LF
5" paint	yellow	500 LF
8" paint	white	200 LF
12" paint	white	500 LF
12" paint	yellow	200 LF
5" skip lines (thermo)	white	1,000 GLF
RPMs	white/yellow/red	2,000
Type 2 left turn arrow	white	20
Type 3 left turn arrow	white	20
ONLY marking	white	10
Yellow markings (GSF)	yellow	1,000
White markings (GSF)	white	1,000
RPMs	white/red	500
Removal of thermoplastic	n/a	2,000 SF
Removal of paint	n/a	500 SF

Pre-marking	pre-marking	2,000 LF
Sharks teeth (yield markings)	n/a	20
24" Stop Bar		500 LF

Long Line Markings. Contractor shall install long line markings as directed (approximately 2 times per year), including centerline markings and edge line markings. Eradication of pavement markings is also included. Contractor shall install premarkings as directed. Estimated quantities are as follows:

<u>Type of Material</u>	<u>Color</u>	<u>Estimated Quantity</u>
5" thermoplastic	white	50,000 LF
5" thermoplastic	yellow	50,000 LF
8" thermoplastic	white	5,000 LF
5" skip lines (thermo)	white	50,000 GLF
RPMs	yellow double sided	2,500
Removal of thermoplastic	n/a	1,000 SF
Pre-marking	pre-marking	5,000 LF

EXHIBIT B
FINANCIAL PROPOSAL

EXHIBIT C

IMMIGRATION AND SECURITY FORM

IMMIGRATION AND SECURITY FORM CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Johns Creek has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 989-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the City of Johns Creek, contractor will secure from such subcontractors(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or substantially similar form. Contractor further agrees to main records of such compliance and provide a copy of each such verification to the City of Johns Creek at the time of the subcontractor(s) is retained to perform such service.

EEV / Basic Pilot Program* User Identification Number

BY: Authorized Officer or Agent
(Contractor Name)

Date

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON
THIS _____ DAY OF _____ 201____

Notary Public

My Commission Expires:_____

*As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/ Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

(End of Form)

AGENDA REPORT



To: Honorable Mayor and City Council Members
From: Tom Henrikson, Senior Contracts Manager
By: John Kachmar, City Manager
Date: November 22, 2010
Agenda: November 29, 2010 Work Session – Agenda Item: Review of Contracts for Right of Way – Mowing / Storm Drain Maintenance

Recommendation: Award contract for \$910,020 to Optech for the maintenance of the City's rights of way and storm drains.

Background: The City decided to contract directly for this service as opposed to the previous process of having the services provided through a contract with CH2M Hill.

Review/Description: A pre-bid conference was held on October 21, 2010 and the proposals were due on November 10, 2010. The proposals were evaluated on November 19, 2010. These evaluations were based on the evaluation criteria as set forth in the RFP and the evaluation committee has recommended awarding the bid to Optech who submitted the highest rated proposal.

Financial Impact: The City is required to fund the annual Maintenance contract costs of \$910,020.

Alternative: Not award the bid.

Concurrent Review: John Kachmar, City Manager
John Henderson, Purchasing Manager
Scott Hastey, Assistant City Attorney Legal

Attachments: Letter of recommendation from the Purchasing Manager

Effective Date: _____

Expiration Date: _____



**CONTRACT AGREEMENT
FOR THE PROVISION OF
RIGHT OF WAY-MOWING AND RIGHT OF WAY-STORM DRAIN
MAINTENANCE SERVICES
(REQUEST FOR PROPOSAL NOS. 10-307-4 AND 10-307-5)**

This Agreement ("Contract") is made and entered into this __ day of _____, 2010, by and between the **CITY OF JOHNS CREEK, GEORGIA**, a municipal corporation of the State of Georgia (the "City"), and **OPTECH MONETTE, LLC**, a Georgia limited liability company with its principal office located at 44 Old Canton Street, Alpharetta, Georgia 30004 ("Contractor"); heretofore referred to jointly as the "Parties."

WHEREAS, the City is charged with the responsibility for the establishment of contracts for the acquisition of goods, materials, supplies and equipment, and services by the various departments of the City of Johns Creek; and

WHEREAS, the City has caused Request for Proposal (RFP) No.10-307-4, Right Of Way-Mowing Maintenance ("RFP No. 10-307-4"), to be issued soliciting proposals from qualified Contractors to furnish all items, labor services, materials and appurtenances called for within such proposal; and

WHEREAS, the City additionally has caused Request for Proposal (RFP) No. 10-307-5, Right of Way-Storm Drain Maintenance ("RFP No. 10-307-5"), to be issued soliciting proposals from qualified Contractors to furnish all items, labor services, materials and appurtenances called for within such proposal; and

WHEREAS, thereafter the City issued Addendum No. 1 to RFP No. 10-307-4 and Addendum No.1 to RFP No. 10-307-5 combining the two RFP's into one and further amending same (such combined and amended RFP's referred to herein as "RFP No. 10-307-4 and 10-307-5" or "RFP"); and

WHEREAS, the contractor selected pursuant to RFP No. 10-307-4 and 10-307-5 is required to provide the services as called for in the specifications; and

WHEREAS, the Contractor submitted a Proposal in response to RFP No. 10-307-4 and 10-307-5 ("Proposal"); and

WHEREAS, the Contractor's submittal was determined by the City to be the proposal most advantageous to the City; and

WHEREAS, the City Council desires to award the contract for the services to be provided

pursuant to the RFP to Contractor.

NOW THEREFORE, in consideration of the foregoing recitals, the sums hereinafter set forth and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1.0 SCOPE OF SERVICES

1.1 **Services.** The Contractor has agreed and by these presents does agree with the City to furnish all equipment, tools, materials, skill, labor of every description, and all things necessary to carry out and complete in a good, firm, substantial and workmanlike manner the services set forth in the Scope of Services, which is attached hereto and incorporated herein as **Exhibit A**, in accordance with the terms of this Contract (the “Services”). The Services shall be performed in strict conformity with the specifications provided for in the RFP and Proposal, which shall form an essential part of this Contract. In addition to the foregoing, subject to Section 8.0 hereof, the following terms and conditions, amendments, and other documents are incorporated by reference and made a part of the terms and conditions of this Contract as is fully set out herein:

- **RFP No. 10-307-4 and 10-307-5, as amended (RFP)**
- **Contractor’s Proposal in response to RFP No. 10-307-4 and 10-307-5 (Proposal)**

1.2 **Time for Performance.** During the term of this Contract, work orders shall be submitted to Contractor by the City, or its designee, requesting the performance of certain Services by Contractor (“Work Orders”). Services are required to be performed within the periods of time set forth in the Work Order or pursuant to the work order priority schedule (See Exhibit A), or as otherwise provided in Exhibit A, the RFP and/or the Proposal; provided however, in the event the period of time for the performance of any service is not set forth in the Work Order, Exhibit A, the RFP or the Proposal, the City will determine the basic period of performance for the completion of any service and notify Contractor of the same via written notice. If no specific period for the completion Services is set forth in writing, such time period shall be a reasonable period of time based upon the nature of the activity. If the completion of this Contract is delayed by actions of the City, then and in such event the time of completion of this Contract shall be extended for such additional time within which to complete the performance of the Contract as is required by such delay. This Contract may be extended by mutual consent of both the City and the Contractor for reasons of additional time, additional services and/or additional areas of work.

1.3 **City’s Designee for Oversight of Performance of Services.** Contractor expressly acknowledges and agrees that the City may designate an independent contractor of the City to provide oversight of Contractor’s performance of Services. At the time of execution of this Agreement, CH2M Hill, Inc., a Florida corporation (“CH2M Hill”), has been contracted with by the City to provide certain professional services for the City, including providing oversight of the Services to be performed by Contractor herein. City agrees to provide Contractor with at least thirty (30) days written notice in the event the City’s designee for provision of oversight of Services is changed from CH2M Hill.

2.0 COMPENSATION

2.1. **Fee.** Contractor shall be a paid a fixed fee in the amount of **Nine-Hundred-and-Ten-Thousand-and-Twenty Dollars (\$910,020.00)** for the performance of Services during the term of this Contract in accordance with the terms of the Proposal (See Financial Proposal, Exhibit B). One-Twelfth (1/12) of such fixed fee shall be billed to the City on a monthly basis following the

delivery of Services for such month.

- 2.2 **Pricing.** It is contemplated from time to time, that Contractor may be required to perform or City may request that Contractor provide certain services that are over and beyond the services being compensated pursuant to Section 2.1. Compensation for the performance of any such additional services shall be in accordance with the rates and prices set forth in the Proposal. Unless clearly stated otherwise herein, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties. The prices offered by Contractor and listed on the attached Financial Proposal, a copy of which is attached hereto as Exhibit "B" and incorporated herein, shall be firm throughout the term of this Contract.
- 2.3 **Invoices.** If applicable, and unless the RFP provides otherwise, the Contractor shall submit, on a monthly basis (or, if applicable, regularly on the periodic basis set forth in the RFP), an invoice for the Services provided to the City under the Contract at the billing address specified in the RFP or as provided herein. The invoice shall comply with all applicable rules concerning payment of such claims. The City shall pay all approved invoices in arrears and in accordance with applicable provisions of City law. Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the City for any goods or services provided by or on behalf of the Contractor under the Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Contract. Standard payment terms: Net-30.
- 2.4 **Delay of Payment Due to Contractor's Failure; City's Right to Set-Off.** If the City in good faith determines that the Contractor has failed to perform or deliver any service or product as required by the Contract, the Contractor shall not be entitled to any compensation under the Contract until such service or product is performed or delivered. In this event, the City may withhold that portion of the Contractor's compensation which represents payment for services or products that were not performed or delivered. To the extent that the Contractor's failure to perform or deliver in a timely manner causes the City to incur costs, the City may deduct or set off the amount of such incurred costs from any amounts payable to Contractor. The City's authority to deduct such incurred costs shall not in any way affect the City's authority to terminate the Contract.
- 2.5 **Set-Off Against Sums Owed by the Contractor.** In the event that the Contractor owes the City any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, the City may set off the sum owed to the City against any sum owed by the City to the Contractor in the City's sole discretion.
- 3.0 **TERM**
- 3.1 **Term.** Pursuant to O.C.G.A. § 36-60-13, this Contract is for a term of one (1) year commencing December 1, 2010, and terminating November 30, 2011 (the "initial term") without further obligation on the part of either party other than outstanding obligations incurred prior to the expiration of such term.
- 3.2 **Contract Renewal.** The City shall have the option, at its sole discretion, to renew the Contract for up to four (4) successive one (1) year terms on a year-to-year basis by giving the Contractor written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term and requesting Contractor's written consent for renewal of the Contract. Renewal will depend upon the best interests of the City, funding, and Contractor's performance. Renewal will be accomplished through the issuance of a Notice of Award Amendment. Upon the

City's election to renew any part of this Contract, Contractor shall remain obligated to perform in strict accordance with this Contract unless otherwise agreed by the City and the Contractor.

- 3.3 **Contract Extension.** In the event that this Contract shall terminate or be likely to terminate prior to the making of an award for a new contract for similar services, the City may, with the written consent of Contractor, extend this Contract for such period as may be necessary to ensure the City continuing services.

4.0 **INDEPENDENT CONTRACTOR**

- 4.1 **Independent Contractor Status.** Contractor is and shall remain an independent contractor; not an employee, agent or servant of the City, and Contractor shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, or employer/employee relationship with the City. Services provided by Contractor shall be by employees, agents or subcontractors of Contractor and subject to supervision by Contractor, and not as officers or employees of City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, and other similar administrative procedures applicable to services rendered under this Agreement shall be the obligation of Contractor.

- 4.2 **Liability for Employment Related Compensation.** The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, sub-contractors, agents, volunteers or representatives, including coverage or benefits related but not limited to local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation insurance; disability, injury, or health insurance; professional liability insurance; errors and omissions insurance; or retirement account contributions in regards to the Contractor provision of Services under this Contract. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds or retirement accounts, insurance premiums or payments, workers compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever. Pursuant to Section 5.0, in the event City is demanded or called upon to assume any such liabilities, Contractor shall indemnify the City for any and all damages and expenses, including legal fees, incurred as a result thereof.

- 4.2 **Licenses, Registrations, Certifications and Permits.** The Contractor shall be responsible for obtaining and maintaining in a valid status, all licenses, registrations, certifications and permits necessary to perform the Services as required by law. Contractor represents to the City that the Contractor and its employees are properly licensed and/or registered within the State of Georgia for the performance of the Services required herein, provided such licensure and/or registration is required by applicable law. Contractor shall provide copies of any such licenses, certifications or permits to the City.

- 4.3 **No Agency.** Neither the City nor the Contractor has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise mutually agreed to in writing. The Contractor agrees not to represent itself as the City's agent for any purpose to any party or to allow any employee of the Contractor to do so, unless specifically

authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. The Contractor shall assume full liability for any contracts or agreements the Contractor enters into on behalf of the City without the express knowledge and prior written consent of the City.

5.0 INDEMNIFICATION

The Contractor agrees to indemnify, hold harmless and defend the City, its officers, employees and agents from and against any and all liabilities, suits, actions, legal proceedings, claims, demands, damages, costs and expenses (including attorney's fees) ("Claims") to the extent related to or arising out of Contractor's breach of any of the representations and warranties provided herein, Contractor's breach of any of the terms of this Contract, or any negligent or intentional act or omission of the Contractor, its agents, employees, or subcontractors, except for any Claims that arise from the City's sole negligence.

6.0 INSURANCE

6.1 Insurance Generally. The Contractor shall obtain and shall continuously maintain during the term of this Contract insurance of the kind and in the minimum amounts specified as follows:

6.1.1 Statutory Worker's Compensation and Employers Liability Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by Georgia law. If Contractor is self-insured, Contractor shall additionally provide the City with a certificate from the Georgia Board of Workers' Compensation stating that the Contractor qualifies to pay its own workers' compensation claims.

6.1.2 Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) per occurrence and in the aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City, and its elected officials, officers, employees and agents as additional insured parties.

6.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than of One Million Dollars (\$1,000,000) per occurrence and in the aggregate with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all of Contractor's subcontractors. Such coverage must include all automotive equipment used in the performance of the Contract, both on and off any work site, and such coverage shall include non-ownership and hired cars (vehicles and equipment) coverage. Such insurance shall be endorsed to name the City, and its elected officials, officers, employees and agents as additional insured parties.

6.2 Requirements of Insurance.

6.2.1 Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

6.2.2 By naming the City as an additional insured on Contractor's insurance policy, the City is only securing protection from liabilities arising out of Contractor's negligence as per the applicable policy. The only insurance policy whereby the City will be listed as an additional insured shall be the Comprehensive General Liability and Comprehensive Automobile policies.

6.2.3 No policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.

6.2.4 Every policy of insurance shall provide that the City will receive notice no less than thirty (30) calendar days prior to any cancellation, termination, or a material change in such policy.

6.2.5 Proof of required insurance shall be maintained in all equipment and motor vehicles insured in accordance with the provisions of this Contract.

6.3 **Failure to Obtain or Maintain Insurance.** The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Contract. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Contract upon which the City may immediately terminate this Contract.

6.4 **Insurance Certificates.** Prior to commencement of the Services, the Contractor shall submit to the City certificates of insurance for all required insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section and its subsections shall be indicated on each certificate of insurance.

6.5 **Additional Insurance Provisions.**

6.5.1 Contractor will ensure that any and all policies of insurance procured hereunder shall provide for a waiver of subrogation against the City, and Contractor waives any claim against the other arising in contract or tort which is covered by its insurance hereunder.

6.5.2 Contractor will additionally name the City's contractor providing oversight of Services on behalf of the City pursuant to Section 1.3 of this Contract as an additional insured on its policies for comprehensive general liability insurance and comprehensive automobile insurance, and shall provide certificates of insurance providing for same. At the time of execution of this Contract, CH2M Hill is the contractor for the City providing such oversight. City agrees to provide Contractor with at least thirty (30) days written notice in the event the City's designee for provision of oversight of Services is changed from CH2M Hill.

7.0 **TERMINATION**

7.1 **Immediate Termination.** Pursuant to O.C.G.A. § 36-60-13, this Contract will terminate immediately and absolutely if the City determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the City cannot fulfill its obligations under the Contract, which determination is at the City's sole discretion and shall be conclusive. Further, the City may terminate the Contract for any one or more of the following reasons effective immediately without advance notice:

7.1.1 In the event the Contractor is required to be certified or licensed as a condition

precedent to providing goods and services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

7.1.2 The City determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;

7.1.3 The Contractor fails to comply with confidentiality laws or provisions; and/or

7.1.4 The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

7.2 **Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for the City to declare the Contractor in default of its obligations under the Contract:

7.2.1 The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform, to the City's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;

7.2.2 The City determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;

7.2.3 The Contractor fails to make substantial and timely progress toward performance of the Contract;

7.2.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the City reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

7.2.5 The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;

7.2.6 The Contractor has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion; or

7.2.7 The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State, the City, or a third party.

7.3 **Notice of Default.** If there is a default event caused by the Contractor, the City shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the City's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the City may:

(i) Immediately terminate the Contract without additional written notice; and/or

(ii) Procure substitute goods or services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor; and/or,

(iii) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

7.4 **Termination for Convenience.** The City may terminate this Agreement for convenience at any time upon thirty (30) day written notice to the Contractor. In the event of a termination for convenience, Contractor shall take immediate steps to terminate work as quickly and effectively as possible and shall terminate all commitments to third-parties unless otherwise instructed by the City. Provided that no damages are due to the City for Contractor's failure to perform in accordance with this Agreement, the City shall pay Contractor for work performed to date in accordance with Section 2.0 herein. The City shall have no further liability to Contractor for such termination.

7.5 **Payment Limitation in Event of Termination.** In the event of termination of the Contract for any reason by the City, the City shall pay only those amounts, if any, due and owing to the Contractor for goods and services actually rendered up to and including the date of termination of the Contract and for which the City is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the City under the Contract in the event of termination. The City shall not be liable for any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead, project close-out costs, termination costs or other costs associated with the performance of the Contract.

7.6 **Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the City, the Contractor shall:

(i) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the City may require;

(ii) Immediately cease using and return to the City, any personal property or materials, whether tangible or intangible, provided by the City to the Contractor;

(iii) Comply with the City's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;

(iv) Cooperate in good faith with the City, its employees, agents and Contractors during the transition period between the notification of termination and the substitution of any replacement Contractor; and

(v) Immediately return to the City any payments made by the City for goods and services that were not delivered or rendered by the Contractor.

8.0 INCLUSION OF DOCUMENTS

The RFP and Response, including any best and final offer, are incorporated in this Contract by reference and form an integral part of this agreement. In the event of a conflict in language between this Contract

and the foregoing documents incorporated herein, the provisions and requirements set forth in this Contract shall govern; provided however, to the extent any of Contractor's obligations or duties set forth in the Proposal exceed the requirements provided within the RFP or this Contract, or the City finds any of the terms set forth in the Proposal more desirable, the terms set forth in the Proposal shall control. Subject to the foregoing, in the event of a conflict between the language in the RFP, as amended, and the Proposal, the language in the former shall govern.

9.0 PERFORMANCE AND PAYMENT BONDS

Prior to or at the time of execution of this Contract, the Contractor, as Principal, and a surety company listed in the Federal Register and licensed to write surety insurance in the State of Georgia, as surety, shall give a Contract Performance Bond and a Payment Bond, each in the amount of one hundred percent (100%) of the contract price for the use of all persons doing work or furnishing skills, tools, machinery, or materials under or for the purpose of the agreement, in accordance with the provisions of the law of the State of Georgia including, but not limited to O.C.G.A. §§ 32-4-119 and 36-91-21 et seq., as applicable. The life of these bonds shall extend through the life of this agreement including sixty (60) day maintenance period (where applicable) and a twelve-month warranty/guarantee period after the completions of work performed under this contract agreement.

10.0 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

11.0 COMPLIANCE WITH ALL LAWS AND LICENSES

The Contractor must obtain all necessary licenses and comply with local, state and federal requirements. The Contractor shall comply with all laws, rules and regulations of any governmental entity pertaining to its performance under this Agreement.

11.1 Federal Requirements.

11.1.1 Federal Compliance Regulations

Federal regulations apply to all City of Johns Creek contracts using Federal funds as a source for the solicitation of goods and services. Successful bidders must comply with the following Federal requirement as they apply to:

1. Equal Employment Opportunity – The Contractor shall not discriminate against any employee or applicant or employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
2. Reports - The submission of reports to the City on behalf of the U.S. Department of Housing and Urban Development as may be determined necessary for the activities covered by this contract, which is federally funded;

3. Patents - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive and irrevocable right to use, and to authorize others to use, for Federal Government purposes:
 - a. Any patent that shall result under this contract; and
 - b. Any patent rights to which the Contractor purchases ownership with grant support;
4. Copy rights - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
 - a. The copyright in any work developed under this contract; and
 - b. Any rights of copyright to which the Contractor purchases ownership with grant support.
5. Access to books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purposes of making audit, examination, excerpts and transcriptions by Federal agencies, the Comptroller General of the United States, or any of their duly authorized representatives; and
6. Retention of all required records for three years after the City makes final payment and all other pending matters are closed.

11.2 **Georgia Security and Immigration Compliance Act.** Contractor agrees to comply with all applicable requirements of the Georgia Security and Immigration Compliance Act of 2006 as codified in O.C.G.A. §§ 13-10-90 and 13-10-91 and regulated in Chapter 300-10-1 of the Rules and Regulations of the State of Georgia, "Public Employers, Their Contractors and Subcontractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program," accessed at <http://www.dol.state.ga.us>, as further set forth in the certification attached as **Exhibit C**. Additionally, Contractor represents that it has complied with any and all requirements of § 50-36-1 prior to the submittal of the Proposal and execution of this Contract.

12.0 ASSIGNMENT AND SUBCONTRACTORS

The Contractor shall not assign or subcontract the whole or any part of this Contract without the City's prior written consent, except Contractor may subcontract a portion of the Services if same has been expressly provided for in the Proposal by providing the name of the subcontractor and the portion of Services being subcontracted. In the event subcontractors are utilized by Contractor for the performance of certain services hereunder, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Contract and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform services hereunder by Contractor shall perform such services in accordance with all terms and conditions of this Contract.

13.0 AMENDMENTS

No amendments to this Agreement shall be effective unless it is in writing and signed by duly authorized

representatives of the parties.

14.0 DRUG-FREE WORK PLACE

Contractor shall maintain a Drug Free Workplace pursuant to the federal Drug Free Workplace Act, as amended from time to time, and shall further ensure that its agents and subcontractors maintain a Drug Free Workplace pursuant to other applicable state laws and regulations. By execution of this Agreement, Contractor certifies that:

- (1) a drug-free workplace will be provided for the Contractor's employees during the performance of this Agreement;
- (2) each subcontractor hired by Contractor shall be required to ensure that the subcontractor's employees are provided a drug-free workplace; and
- (3) Contractor, including its employees, agents and subcontractors, will not engage in any unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Agreement.

15.0 POLICY OF NON-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall not discriminate against any person in its operations, activities or delivery of services under this Contract and shall further ensure that Contractor's agents and/or subcontractors comply with same. Contractor, its agents and subcontractors shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any employee, applicant or person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for the provision or denial of employment or service delivery.

16.0 CONFLICTS OF INTEREST/COLLUSION/CONTINGENT FEES

- 16.1 Neither Contractor nor any of its officers, employees, agents or representatives shall have or hold any employment or contractual relationship that is antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Contract.
- 16.2 Neither Contractor nor any of its directors, officers, employees, agents or representatives shall obtain any kickbacks or benefits for itself, themselves or other clients as a result of any City purchases or transactions.
- 16.3 Contractor shall not collude with other City contract providers regarding City business or matters. Contractor shall not enter into any business relationships with other City contract providers regarding City business or matters, without the approval of the City Manager, which approval may be withheld at the City Manager's sole discretion.
- 16.4 Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, company, Contractor, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. Provided

however, this provision does not encompass Contractor's ability to have hired or engaged consultants to assist in preparation of the proposal and delivery of the services hereunder. For the breach or violation of this provision, the City shall have the right to terminate the Contract without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

- 16.5 Prior to the performance of Services, Contractor agrees that it will provide the City with a written oath from all officers, agents or other persons who may have acted on behalf of or represented Contractor in preparing its Proposal, which shall provide that such person did not cause or induce any other party from withdrawing a proposal in response to the RFP.

17.0 ADDITIONAL TERMS

The City shall not be bound by any terms and conditions included in any Contractor invoice, packaging, catalog, brochure, technical data sheet, or other document which attempts to impose any condition in variance with or in addition to the terms and conditions contained herein.

18.0 ANTITRUST ACTIONS

For good cause and as consideration for executing this Contract or placing this order, Contractor acting herein by and through its duly authorized agent hereby conveys, sells, assigns, and transfers to the City of Johns Creek all rights, title, and interest to and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of Georgia relating to the particular goods or services purchased or acquired by the City of Johns Creek pursuant hereto.

19.0 PUBLIC RECORDS

Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to the City, subject to the provision of O.C.G.A. §50-14-1 *et seq.*, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Contract by the City. Contractor agrees to retain all public records in accordance with the City's records retention and disposal policies, O.C.G.A. 50-18-92 *et. seq.* and the Georgia Administrative Code. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

20.0 REPORTING REQUIREMENTS AND AUDIT RIGHTS

Written status reports shall be submitted to the City on a regular basis (weekly/monthly, as directed by the City) providing, at a minimum, data or information regarding the Services delivered to the City during the previous period. Further, upon two (2) days prior notice, the City shall the right to inspect and audit any and all records (including, without limitation financial records) of Contractor that pertain to Contractor's performance of Services, fees or expenses invoiced to the City by Contractor, or any obligations imposed by this Contract.

21.0 OWNERSHIP OF DOCUMENTS

Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the City of Johns Creek upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the City. Other materials, statistical data derived from other clients and other client projects, software, methodology and proprietary work used or provided by the

Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the City and may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under the Georgia Open Records Act, to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services.

22.0 USE OF CITY LOGO

To the extent requested by the City Manager, the City logo shall be displayed by Contractor on equipment and vehicles while being used in providing Services hereunder, in a format, size and color approved and provided by the City; provided however, the City logo shall not be used on any such equipment and vehicles when Contractor is not providing Services. All use of the City's logo shall be approved by the City Manager or his designee.

23.0 CONFIDENTIAL INFORMATION

23.1 Access to Confidential Data. The Contractor's employees, agents and subcontractors may have access to confidential data or information maintained by the City to the extent necessary to carry out the Contractor's responsibilities under the Contract. The Contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the City. If it is reasonably likely the Contractor will have access to the City's confidential information, then:

(i) The Contractor shall provide to the City a written description of the Contractor's policies and procedures to safeguard confidential information;

(ii) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;

(iii) The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and

(iv) The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract. The private or confidential data shall remain the property of the City at all times. Some services performed for the City may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Contract.

23.2 No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated, unless otherwise required by law, without the written consent of the City, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the City. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the City.

23.3 Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for

records containing confidential information, the Contractor shall promptly notify the City and cooperate with the City in any lawful effort to protect the confidential information.

23.4 **Reporting of Unauthorized Disclosure.** The Contractor shall immediately report to the City any unauthorized disclosure of confidential information.

23.5 **Survives Termination.** The Contractor's confidentiality obligation under the Contract shall survive termination of the Contract.

24.0 NOTICES

Any notice required or permitted by this Contract shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail.

If to the City:

City Manager
City of Johns Creek
12000 Findley Road
Suite 400
Johns Creek, GA 30097

If to Contractor:

Optech Monette, LLC
44 Old Canton Street
Alpharetta, GA 30004
Attn: _____

With a copy to:

City Attorney
City of Johns Creek
12000 Findley Road
Suite 400
Johns Creek, GA 30097

25.0 GOVERNING LAW

This Contract shall be governed in all respects by the laws of the State of Georgia. The Superior Court of Fulton County, Georgia shall have exclusive jurisdiction to try disputes arising under or by virtue of this contract; provided however, if federal jurisdiction governs any such dispute, venue shall be in the United States District Court, Northern District of Georgia.

26.0 ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties with respect to the subject matter contained herein; subject to Section 8.0, all prior agreements, representations, statements, negotiations, and undertakings are suspended hereby. Neither party has relied on any representation, promise, or inducement not contained or otherwise incorporated herein.

27.0 SPECIAL TERMS AND CONDITIONS

(Attached are any special terms and conditions to this contract, if applicable:) NONE

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed by their duly authorized officers as of the day and year set forth next to each signature.

OPTECH MONETTE, LLC

By:

DATE

ATTEST

By:

DATE

CITY OF JOHNS CREEK

By:
Mayor

DATE

By:
City Clerk

DATE

Approved as to form and legal
sufficiency subject to execution
by the parties:

By:
City Attorney

DATE

EXHIBIT A
SCOPE OF SERVICES

1. Right-of-Way – Mowing Maintenance

1.1 General Performance.

- Contractor shall perform all construction and traffic maintenance work in accordance with Georgia Department of Transportation Standard Specifications for Construction of transportation Systems and other GDOT specifications as applicable.
- Contractor shall comply with all current State and Federal construction safety regulations, including OSHA regulations.
- Contractor shall comply with *Manual on Uniform Traffic Control Devices* (MUTCD, current edition) and the State of Georgia Department of Transportation standards for traffic control.
- Contractor shall submit a proposed Traffic Control Plan to the Public Works Director or his/ her designee before starting any work involving a lane or roadway closure, and no lane or roadway closure shall occur without the approval of the Public Works Director or his/her designee. All construction signs and devices will be in like new condition and meet the latest GDOT requirements. Further, all flaggers must be GDOT certified. Traffic control will include flagging and covering areas along the site area that may present safety issues with pedestrians. The Contractor must maintain a safe work zone for their employees, pedestrians and vehicular transportation. When a water source is required, Contractor shall secure a water meter from Fulton County. All water used on the project must be from a metered source.

1.2 Certifications.

Contractor shall provide the City with copies of CDL licenses, GDOT flagger certifications, and any other required certifications or licenses.

1.3 Right-of-Way – Mowing Maintenance Services.

Contractor shall perform the following right-of-way mowing maintenance services:

- Provide labor and equipment for right of way mowing (approximately 600 centerline miles) and related services, litter pickup, graffiti removal, pickup and disposal of illegally dumped material and dead animals.

- Provide personnel and equipment to complete the tasks as described herein. All work shall conform to Georgia Department of Transportation Standard Specifications, current edition.
- Provide crew(s) with the proper number of staff and equipment to perform right of way maintenance identified in the scope and in assigned work orders. Adequate personnel must be provided to meet safety requirements at all times.
- Right-of- Way Mowing.

Contractor shall mow the right of way in accordance with the following locations, schedules and tasks; pick up trash along the designated routes before mowing; mow, edge and trim the entire area from curb to right-of-way limit that is not currently being maintained by adjacent landowners and as directed. The growing and mowing season generally extends from April 1 through October 31. However, non-growing season mowing may be required as needed.

Frequency of cutting and specific streets and limits to be cut shall be determined by the City's Public Works Director or his designee.

- Medlock Bridge Road (median) shall be maintained on a weekly basis.

Streets to be mowed shall include the following Primary and Secondary streets.

Primary streets include:

- Old Alabama Road (Medlock Bridge Road to Nesbit Ferry Road)
 - Jones Bridge Road (McGinnis Ferry Road to Barnwell Road)
 - State Bridge Road (Kimball Bridge Road to Chattahoochee River)
 - McGinnis Ferry Road – south side only (Jones Bridge Road to Chattahoochee River)
 - Medlock Bridge Road (McGinnis Ferry Road to Chattahoochee River) *
 - Abbots Bridge Road (Jones Bridge Road to Chattahoochee River) *
 - Kimball Bridge Road (Jones Bridge Road to State Bridge Road)
 - Nesbit Ferry Road (Old Alabama Road to the City Limits)
 - Findley Road (Medlock Bridge Road to Sargent Road)
- *note: A GDOT right of way maintenance permit is required on Medlock Bridge Road and Abbots Bridge Road

Secondary streets include:

- Barnwell Road
- Buice Road

- Parson Road
- Bell Road
- Sargent Road
- Boles Road
- Brumbelow Road
- Alvin Road
- Haynes Bridge Road
- Wilson Road
- Rogers Circle
- Medlock Crossing Parkway
- Morton Road
- Autrey Mill Road
- Rogers Bridge Trail (multi-use trail)
- Contractor shall perform the following procedures as part of the right of way mowing process:
 - Clean debris and trash from grassed and landscaped areas prior to mowing and edging
 - Mow, edge and trim the entire area from curb to ROW limit that is not currently being maintained by adjacent landowners at a frequency of once per month during dormant months and once per week during the growing season
 - Make a reasonable effort to police and remove cigarette butts and trash at intersections
 - Maintain grass at the recommended height for the type of grass present
 - Edge all walks, drives, curb, and planting beds (all planting beds shall maintain a smooth contour)
 - Trim all trees, posts, walls, and other elements in the ROW in a safe manner
 - Maintain a mulched safe zone around tree bases for protection where required
 - Blow grass from sidewalks and curbs in coordination with grass cutting and ROW maintenance activities
 - Clean debris, trash, and litter associated with grass cutting and ROW maintenance activities (properly dispose of grass clippings)
 - Use pre- and post-emergence herbicides as needed to control areas along walls, guard rails, fence lines, tree wells and building edges but minimize dead appearance.

1.4 Additional Services.

- Contractor shall provide street sweep services upon the request of the City. These services shall be billed to the City based on the per instance cost set forth in the Financial Proposal.
- Contractor shall provide tree removal services upon the request of the City. These services shall be billed to the City based on the per instance cost set forth in the Financial Proposal.

1.5 Work Order Priority.

Contractor shall perform services in accordance with Work Orders provided by the City and pursuant to an established work order priority schedule. After hours and emergency work orders may be authorized verbally and followed up with a written work order. The following priority identifiers shall have the corresponding meaning:

- Priority 1: Complete within 24 hours.
- Priority 2: Complete within 72 hours.
- Priority 3: Complete within 10 business days.
- Priority 4: Complete within scheduled maintenance period.

1.6 Equipment.

Contractor shall provide equipment and vehicles necessary to complete the tasks as described and within the timeframes specified. Contractor shall maintain equipment in a clean and professional condition.

2. Right-of-Way – Storm Drain Maintenance

2.1 General Performance.

- Contractor shall perform all construction and traffic maintenance work in accordance with Georgia Department of Transportation Standard Specifications for Construction of transportation Systems and other GDOT specifications as applicable.
- Contractor shall comply with all current State and Federal construction safety regulations, including OSHA regulations.
- Contractor shall comply with *Manual on Uniform Traffic Control Devices* (MUTCD, current edition) and the State of Georgia Department of Transportation standards for traffic control.

- Contractor shall submit a proposed Traffic Control Plan to the Public Works Director or his/ her designee before starting any work involving a lane or roadway closure, and no lane or roadway closure shall occur without the approval of the Public Works Director or his/her designee. All construction signs and devices will be in like new condition and meet the latest GDOT requirements. Further, all flaggers must be GDOT certified. Traffic control will include flagging and covering areas along the site area that may present safety issues with pedestrians. The Contractor must maintain a safe work zone for their employees, pedestrians and vehicular transportation. When a water source is required, Contractor shall secure a water meter from Fulton County. All water used on the project must be from a metered source.

2.2 Certifications.

Contractor shall provide the City with copies of CDL licenses, GDOT flagger certifications, and any other required certifications or licenses.

2.3 Right-of-Way – Storm Drain Maintenance Services.

Contractor shall perform the following right-of-way storm drain maintenance services:

- Provide labor and equipment for right of way storm drain maintenance services for approximately 1,000 structures per year.
- Provide labor and equipment for maintenance of the nine city-owned detention ponds as listed: Newtown Park (5 ponds); Ocee Park; Shakerag Park; Fire Station #61 at Medlock; and Fire Station #62 at Shakerag.
- Provide personnel and equipment to complete the tasks as described herein. All work shall conform to Georgia Department of Transportation Standard Specifications, current edition.
- Provide crew(s) with the proper number of staff and equipment to perform right of way maintenance identified in the scope and in assigned work orders. Adequate personnel must be provided to meet safety requirements at all times.
- Some of this work will necessitate after hours call out and/ or weekend work. Provide crews available for incidents, emergencies and weather related emergencies on a 24 hour on-call basis with a 2 hour response time.
- Right-of-Way Storm Drain Maintenance.

Contractor shall perform minor storm drain maintenance activities, including, but not limited to, catch basin cleaning and removing debris to maintain proper

operability.

Contractor shall perform the following services as part of right of way storm drain maintenance:

- Provide labor and equipment to maintain the storm drain system in the City of Johns Creek in accordance with agreed upon schedules and frequencies.
- Maintain industry standards for line washing of drainage piping and culverts, vacuuming of curb inlets, catch basins and drop inlets for the storm drain system.
- Maintain adequate traffic safety control while performing storm drain system maintenance tasks.
- Collect and properly dispose of all solids and debris washed and vacuumed from the storm drain system.
- Complete work orders in accordance with priority rankings.

2.4 Additional Services.

Contractor shall provide CCTV pipe inspections upon the request of the City. These services shall be billed to the City based on the per instance cost set forth in the Financial Proposal.

2.5 Work Order Priority.

Contractor shall perform services in accordance with Work Orders provided by the City and pursuant to an established work order priority schedule. After hours and emergency work orders may be authorized verbally and followed up with a written work order. The following priority identifiers shall have the corresponding meaning:

- Priority 1: Complete within 24 hours.
- Priority 2: Complete within 72 hours.
- Priority 3: Complete within 10 business days.
- Priority 4: Complete within scheduled maintenance period.

2.6 Equipment.

Contractor shall provide equipment and vehicles necessary to complete the tasks as described and within the timeframes specified. Contractor shall maintain equipment in a clean and professional condition.

Financial Proposal (per Appendix B of City RFP)

Offeror Name: Optech Monette, L.L.C.

Optech Monette has worked faithfully through a subcontract with CH2M Hill for the past four (4) years on behalf of the City of Johns Creek and its citizens. Now, we have an opportunity to continue that relationship of trust we have built together with the City. At the same time, we would like to offer a financial incentive to keep Optech Monette as your partner in providing trusted public works services. During the past four years we have purchased a great deal of equipment and vehicles to use on this project. With careful financial management, we have paid for a substantial portion of this equipment in preparation for this day. It has always been our feeling the City may seek another business model which would better suit its needs and potentially reduce its overhead and operating cost. Rather than increase our profits, we are happy to now pass along those annual cost savings we will enjoy beginning in 2011, when much of this equipment is paid out. We are proposing the following cost for services:

RFP # 10-307-4 ROW Mowing	\$ 315,000/year
RFP # 10-307-5 ROW Storm Drain Maintenance	<u>\$ 595,020/year</u>
Annual Cost	\$ 910,020/year

Additional Services Pricing (per Section 3.1 of the RFP, Scope of Work)

- Street Sweeping per instance cost: \$ 50.00/curb mile
- Tree Removal unit costs:

4-8"	\$ 250 minimum
8-12"	\$ 500 minimum
24-larger	to be negotiated
- CCTV

Minimum	\$ 400/trip
18" pipe	add \$0.75/foot
24-30" pipe	add \$1.00/foot
36" pipe	add \$ 1.25/foot
- Additional ROW Grass Cutting (above annual specified allowance)

Unit Cost	\$ 135/mile
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EXHIBIT C

IMMIGRATION AND SECURITY FORM

**IMMIGRATION AND SECURITY FORM
CONTRACTOR AFFIDAVIT AND AGREEMENT**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Johns Creek has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 989-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the City of Johns Creek, contractor will secure from such subcontractors(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or substantially similar form. Contractor further agrees to main records of such compliance and provide a copy of each such verification to the City of Johns Creek at the time of the subcontractor(s) is retained to perform such service.

EEV / Basic Pilot Program* User Identification Number

BY: Authorized Officer or Agent
(Contractor Name)

Date

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON
THIS _____ DAY OF _____ 201____

Notary Public

My Commission Expires: _____

*As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the “EEV/ Basic Pilot Program” operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

(End of Form)

AGENDA REPORT



To: Honorable Mayor and City Council Members
From: Tom Henrikson, Senior Contracts Manager
By: John Kachmar, City Manager
Date: November 22, 2010
Agenda: November 29, 2010 Work Session – Agenda Item: Review of Contracts for Park Maintenance

Recommendation: Award contract for \$669,600 to Optech for the maintenance of the City's parks.

Background: The City decided to contract directly for this service as opposed to the previous process of having the services provided through a contract with CH2M Hill.

Review/Description: A pre-bid conference was held on October 22, 2010 and the proposals were due on November 15, 2010. The proposals were evaluated on November 19, 2010. These evaluations were based on the evaluation criteria as set forth in the RFP and the evaluation committee has recommended awarding the bid to Optech who submitted the highest rated proposal.

Financial Impact: The City is required to fund the annual Maintenance contract costs of \$669,600.

Alternative: Not award the bid.

Concurrent Review: John Kachmar, City Manager
John Henderson, Purchasing Manager
Scott Hastey, Assistant City Attorney Legal

Attachments: Letter of recommendation from the Purchasing Manager

Effective Date: _____

Expiration Date: _____



**CONTRACT AGREEMENT
FOR THE PROVISION OF
PARK MAINTENANCE SERVICES
(REQUEST FOR PROPOSAL NO. 10-319-2)**

This Agreement ("Contract") is made and entered into this ____ day of _____, 2010, by and between the **CITY OF JOHNS CREEK, GEORGIA**, a municipal corporation of the State of Georgia (the "City"), and **OPTECH MONETTE, LLC**, a Georgia limited liability company with its principal office located at 44 Old Canton Street, Alpharetta, Georgia 30004 ("Contractor"); heretofore referred to jointly as the "Parties."

WHEREAS, the City is charged with the responsibility for the establishment of contracts for the acquisition of goods, materials, supplies and equipment, and services by the various departments of the City of Johns Creek; and

WHEREAS, the City has caused Request for Proposal (RFP) No.10-319-2, Park Maintenance to be issued soliciting proposals from qualified Contractors to furnish all items, labor services, materials and appurtenances called for within such proposal; and

WHEREAS, thereafter the City issued Addendum No. 1 to RFP No. 10-319-2 (RFP No. 10-319-2, as amended, referred to hereinafter as "RFP No. 10-319-2" or "RFP"); and

WHEREAS, the contractor selected pursuant to RFP No. 10-319-2 is required to provide the services as called for in the specifications; and

WHEREAS, the Contractor submitted a Proposal in response to RFP No. 10-319-2 ("Proposal"); and

WHEREAS, the Contractor's submittal was determined by the City to be the proposal most advantageous to the City; and

WHEREAS, the City Council desires to award the contract for the services to be provided pursuant to the RFP to Contractor.

NOW THEREFORE, in consideration of the foregoing recitals, the sums hereinafter set forth and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1.0 SCOPE OF SERVICES

- 1.1 **Services.** The Contractor has agreed and by these presents does agree with the City to furnish all equipment, tools, materials, skill, labor of every description, and all things necessary to carry out and complete in a good, firm, substantial and workmanlike manner the services set forth in the Scope of Services, which is attached hereto and incorporated herein as **Exhibit A**, in accordance with the terms of this Contract (the “Services”). The Services shall be performed in strict conformity with the specifications provided for in the RFP and Proposal, which shall form an essential part of this Contract. In addition to the foregoing, subject to Section 8.0 hereof, the following terms and conditions, amendments, and other documents are incorporated by reference and made a part of the terms and conditions of this Contract as is fully set out herein:

- **RFP No. 10-319-2, as amended (RFP)**
- **Contractor’s Proposal in response to RFP No. 10-319-2 (Proposal)**

- 1.2 **Time for Performance.** During the term of this Contract, work orders shall be submitted to Contractor by the City, or its designee, requesting the performance of certain Services by Contractor (“Work Orders”). Services are required to be performed within the periods of time set forth in the Work Order or pursuant to the work order priority schedule (See Exhibit A), or as otherwise provided in Exhibit A, the RFP and/or the Proposal; provided however, in the event the period of time for the performance of any service is not set forth in the Work Order, Exhibit A, the RFP or the Proposal, the City will determine the basic period of performance for the completion of any service and notify Contractor of the same via written notice. If no specific period for the completion Services is set forth in writing, such time period shall be a reasonable period of time based upon the nature of the activity. If the completion of this Contract is delayed by actions of the City, then and in such event the time of completion of this Contract shall be extended for such additional time within which to complete the performance of the Contract as is required by such delay. This Contract may be extended by mutual consent of both the City and the Contractor for reasons of additional time, additional services and/or additional areas of work.

- 1.3 **City’s Designee for Oversight of Performance of Services.** Contractor expressly acknowledges and agrees that the City may designate an independent contractor of the City to provide oversight of Contractor’s performance of Services. At the time of execution of this Agreement, CH2M Hill, Inc., a Florida corporation (“CH2M Hill”), has been contracted with by the City to provide certain professional services for the City, including providing oversight of the Services to be performed by Contractor herein. City agrees to provide Contractor with at least thirty (30) days written notice in the event the City’s designee for provision of oversight of Services is changed from CH2M Hill.

2.0 COMPENSATION

- 2.1. **Fee.** Contractor shall be a paid a fixed fee in the amount of **Six-Hundred-Sixty-Nine-Thousand-and-Six-Hundred Dollars (\$669,600.00)** for the performance of Services during the term of this Contract in accordance with the terms of the Proposal. One-Twelfth (1/12) of such fixed fee shall be billed to the City on a monthly basis following the delivery of Services for such month.
- 2.2 **Pricing.** It is contemplated from time to time, that Contractor may be required to perform or City may request that Contractor provide certain services that are over and beyond the services being compensated pursuant to Section 2.1. Compensation for the performance of any such additional services shall be in accordance with the rates and prices set forth in the Proposal. Unless clearly

stated otherwise herein, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties. The prices offered by Contractor and listed in the Proposal shall be firm throughout the term of this Contract.

2.3 **Invoices.** If applicable, and unless the RFP provides otherwise, the Contractor shall submit, on a monthly basis (or, if applicable, regularly on the periodic basis set forth in the RFP), an invoice for the Services provided to the City under the Contract at the billing address specified in the RFP or as provided herein. The invoice shall comply with all applicable rules concerning payment of such claims. The City shall pay all approved invoices in arrears and in accordance with applicable provisions of City law. Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the City for any goods or services provided by or on behalf of the Contractor under the Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Contract. Standard payment terms: Net-30.

2.4 **Delay of Payment Due to Contractor's Failure; City's Right to Set-Off.** If the City in good faith determines that the Contractor has failed to perform or deliver any service or product as required by the Contract, the Contractor shall not be entitled to any compensation under the Contract until such service or product is performed or delivered. In this event, the City may withhold that portion of the Contractor's compensation which represents payment for services or products that were not performed or delivered. To the extent that the Contractor's failure to perform or deliver in a timely manner causes the City to incur costs, the City may deduct or set off the amount of such incurred costs from any amounts payable to Contractor. The City's authority to deduct such incurred costs shall not in any way affect the City's authority to terminate the Contract.

2.5 **Set-Off Against Sums Owed by the Contractor.** In the event that the Contractor owes the City any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, the City may set off the sum owed to the City against any sum owed by the City to the Contractor in the City's sole discretion.

3.0 **TERM**

3.1 **Term.** Pursuant to O.C.G.A. § 36-60-13, this Contract is for a term of one (1) year commencing December 1, 2010, and terminating November 30, 2011 (the "initial term") without further obligation on the part of either party other than outstanding obligations incurred prior to the expiration of such term.

3.2 **Contract Renewal.** The City shall have the option, at its sole discretion, to renew the Contract for up to four (4) successive one (1) year terms on a year-to-year basis by giving the Contractor written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term and requesting Contractor's written consent for renewal of the Contract. Renewal will depend upon the best interests of the City, funding, and Contractor's performance. Renewal will be accomplished through the issuance of a Notice of Award Amendment. Upon the City's election to renew any part of this Contract, Contractor shall remain obligated to perform in strict accordance with this Contract unless otherwise agreed by the City and the Contractor.

3.3 **Contract Extension.** In the event that this Contract shall terminate or be likely to terminate prior to the making of an award for a new contract for similar services, the City may, with the written consent of Contractor, extend this Contract for such period as may be necessary to ensure the City continuing services.

4.0 INDEPENDENT CONTRACTOR

- 4.1 **Independent Contractor Status.** Contractor is and shall remain an independent contractor; not an employee, agent or servant of the City, and Contractor shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, or employer/employee relationship with the City. Services provided by Contractor shall be by employees, agents or subcontractors of Contractor and subject to supervision by Contractor, and not as officers or employees of City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, and other similar administrative procedures applicable to services rendered under this Agreement shall be the obligation of Contractor.
- 4.2 **Liability for Employment Related Compensation.** The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, sub-contractors, agents, volunteers or representatives, including coverage or benefits related but not limited to local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation insurance; disability, injury, or health insurance; professional liability insurance; errors and omissions insurance; or retirement account contributions in regards to the Contractor provision of Services under this Contract. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds or retirement accounts, insurance premiums or payments, workers compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever. Pursuant to Section 5.0, in the event City is demanded or called upon to assume any such liabilities, Contractor shall indemnify the City for any and all damages and expenses, including legal fees, incurred as a result thereof.
- 4.2 **Licenses, Registrations, Certifications and Permits.** The Contractor shall be responsible for obtaining and maintaining in a valid status, all licenses, registrations, certifications and permits necessary to perform the Services as required by law. Contractor represents to the City that the Contractor and its employees are properly licensed and/or registered within the State of Georgia for the performance of the Services required herein, provided such licensure and/or registration is required by applicable law. Contractor shall provide copies of any such licenses, certifications or permits to the City.
- 4.3 **No Agency.** Neither the City nor the Contractor has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise mutually agreed to in writing. The Contractor agrees not to represent itself as the City's agent for any purpose to any party or to allow any employee of the Contractor to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. The Contractor shall assume full liability for any contracts or agreements the Contractor enters into on behalf of the City without the express knowledge and prior written consent of the City.

5.0 INDEMNIFICATION

The Contractor agrees to indemnify, hold harmless and defend the City, its officers, employees and agents from and against any and all liabilities, suits, actions, legal proceedings, claims, demands, damages, costs and expenses (including attorney's fees)("Claims") to the extent related to or arising out of Contractor's breach of any of the representations and warranties provided herein, Contractor's breach of any of the terms of this Contract, or any negligent or intentional act or omission of the Contractor, its agents, employees, or subcontractors, except for any Claims that arise from the City's sole negligence.

6.0 INSURANCE

6.1 Insurance Generally. The Contractor shall obtain and shall continuously maintain during the term of this Contract insurance of the kind and in the minimum amounts specified as follows:

6.1.1 Statutory Worker's Compensation and Employers Liability Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by Georgia law. If Contractor is self-insured, Contractor shall additionally provide the City with a certificate from the Georgia Board of Workers' Compensation stating that the Contractor qualifies to pay its own workers' compensation claims.

6.1.2 Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) per occurrence and in the aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City, and its elected officials, officers, employees and agents as additional insured parties.

6.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than of One Million Dollars (\$1,000,000) per occurrence and in the aggregate with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all of Contractor's subcontractors. Such coverage must include all automotive equipment used in the performance of the Contract, both on and off any work site, and such coverage shall include non-ownership and hired cars (vehicles and equipment) coverage. Such insurance shall be endorsed to name the City, and its elected officials, officers, employees and agents as additional insured parties.

6.2 Requirements of Insurance.

6.2.1 Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

6.2.2 By naming the City as an additional insured on Contractor's insurance policy, the City is only securing protection from liabilities arising out of Contractor's negligence as per the applicable policy. The only insurance policy whereby the City will be listed as an additional insured shall be the Comprehensive General Liability and Comprehensive Automobile policies.

6.2.3 No policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.

6.2.4 Every policy of insurance shall provide that the City will receive notice no less than thirty (30) calendar days prior to any cancellation, termination, or a material change in such policy.

6.2.5 Proof of required insurance shall be maintained in all equipment and motor vehicles insured in accordance with the provisions of this Contract.

6.3 **Failure to Obtain or Maintain Insurance.** The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Contract. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Contract upon which the City may immediately terminate this Contract.

6.4 **Insurance Certificates.** Prior to commencement of the Services, the Contractor shall submit to the City certificates of insurance for all required insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section and its subsections shall be indicated on each certificate of insurance.

6.5 **Additional Insurance Provisions.**

6.5.1 Contractor will ensure that any and all policies of insurance procured hereunder shall provide for a waiver of subrogation against the City, and Contractor waives any claim against the other arising in contract or tort which is covered by its insurance hereunder.

6.5.2 Contractor will additionally name the City's contractor providing oversight of Services on behalf of the City pursuant to Section 1.3 of this Contract as an additional insured on its policies for comprehensive general liability insurance and comprehensive automobile insurance, and shall provide certificates of insurance providing for same. At the time of execution of this Contract, CH2M Hill is the contractor for the City providing such oversight. City agrees to provide Contractor with at least thirty (30) days written notice in the event the City's designee for provision of oversight of Services is changed from CH2M Hill.

7.0 **TERMINATION**

7.1 **Immediate Termination.** Pursuant to O.C.G.A. § 36-60-13, this Contract will terminate immediately and absolutely if the City determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the City cannot fulfill its obligations under the Contract, which determination is at the City's sole discretion and shall be conclusive. Further, the City may terminate the Contract for any one or more of the following reasons effective immediately without advance notice:

7.1.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

7.1.2 The City determines that the actions, or failure to act, of the Contractor, its agents,

employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;

7.1.3 The Contractor fails to comply with confidentiality laws or provisions; and/or

7.1.4 The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

7.2 **Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for the City to declare the Contractor in default of its obligations under the Contract:

7.2.1 The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform, to the City's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;

7.2.2 The City determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;

7.2.3 The Contractor fails to make substantial and timely progress toward performance of the Contract;

7.2.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the City reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

7.2.5 The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;

7.2.6 The Contractor has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion; or

7.2.7 The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State, the City, or a third party.

7.3 **Notice of Default.** If there is a default event caused by the Contractor, the City shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the City's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the City may:

(i) Immediately terminate the Contract without additional written notice; and/or

(ii) Procure substitute goods or services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor; and/or,

(iii) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

- 7.4 **Termination for Convenience.** The City may terminate this Agreement for convenience at any time upon thirty (30) day written notice to the Contractor. In the event of a termination for convenience, Contractor shall take immediate steps to terminate work as quickly and effectively as possible and shall terminate all commitments to third-parties unless otherwise instructed by the City. Provided that no damages are due to the City for Contractor's failure to perform in accordance with this Agreement, the City shall pay Contractor for work performed to date in accordance with Section 2.0 herein. The City shall have no further liability to Contractor for such termination.
- 7.5 **Payment Limitation in Event of Termination.** In the event of termination of the Contract for any reason by the City, the City shall pay only those amounts, if any, due and owing to the Contractor for goods and services actually rendered up to and including the date of termination of the Contract and for which the City is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the City under the Contract in the event of termination. The City shall not be liable for any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead, project close-out costs, termination costs or other costs associated with the performance of the Contract.
- 7.6 **Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the City, the Contractor shall:
- (i) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the City may require;
 - (ii) Immediately cease using and return to the City, any personal property or materials, whether tangible or intangible, provided by the City to the Contractor;
 - (iii) Comply with the City's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;
 - (iv) Cooperate in good faith with the City, its employees, agents and Contractors during the transition period between the notification of termination and the substitution of any replacement Contractor; and
 - (v) Immediately return to the City any payments made by the City for goods and services that were not delivered or rendered by the Contractor.

8.0 INCLUSION OF DOCUMENTS

The RFP and Response, including any best and final offer, are incorporated in this Contract by reference and form an integral part of this agreement. In the event of a conflict in language between this Contract and the foregoing documents incorporated herein, the provisions and requirements set forth in this Contract shall govern; provided however, to the extent any of Contractor's obligations or duties set forth in the Proposal exceed the requirements provided within the RFP or this Contract, or the City finds any of the terms set forth in the Proposal more desirable, the terms set forth in the Proposal shall control. Subject to the foregoing, in the event of a conflict between the language in the RFP, as amended, and the

Proposal, the language in the former shall govern.

9.0 PERFORMANCE AND PAYMENT BONDS

Prior to or at the time of execution of this Contract, the Contractor, as Principal, and a surety company listed in the Federal Register and licensed to write surety insurance in the State of Georgia, as surety, shall give a Contract Performance Bond and a Payment Bond, each in the amount of one hundred percent (100%) of the contract price for the use of all persons doing work or furnishing skills, tools, machinery, or materials under or for the purpose of the agreement, in accordance with the provisions of the law of the State of Georgia including, but not limited to O.C.G.A. §§ 32-4-119 and 36-91-21 et seq., as applicable. The life of these bonds shall extend through the life of this agreement including sixty (60) day maintenance period (where applicable) and a twelve-month warranty/guarantee period after the completions of work performed under this contract agreement.

10.0 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

11.0 COMPLIANCE WITH ALL LAWS AND LICENSES

The Contractor must obtain all necessary licenses and comply with local, state and federal requirements. The Contractor shall comply with all laws, rules and regulations of any governmental entity pertaining to its performance under this Agreement.

11.1 Federal Requirements.

11.1.1 Federal Compliance Regulations

Federal regulations apply to all City of Johns Creek contracts using Federal funds as a source for the solicitation of goods and services. Successful bidders must comply with the following Federal requirement as they apply to:

1. Equal Employment Opportunity – The Contractor shall not discriminate against any employee or applicant or employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
2. Reports - The submission of reports to the City on behalf of the U.S. Department of Housing and Urban Development as may be determined necessary for the activities covered by this contract, which is federally funded;
3. Patents - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive and irrevocable right to use, and to authorize others to use, for Federal Government purposes:

- a. Any patent that shall result under this contract; and
 - b. Any patent rights to which the Contractor purchases ownership with grant support;
 - 4. Copy rights - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
 - a. The copyright in any work developed under this contract; and
 - b. Any rights of copyright to which the Contractor purchases ownership with grant support.
 - 5. Access to books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purposes of making audit, examination, excerpts and transcriptions by Federal agencies, the Comptroller General of the United States, or any of their duly authorized representatives; and
 - 6. Retention of all required records for three years after the City makes final payment and all other pending matters are closed.
- 11.2 **Georgia Security and Immigration Compliance Act.** Contractor agrees to comply with all applicable requirements of the Georgia Security and Immigration Compliance Act of 2006 as codified in O.C.G.A. §§ 13-10-90 and 13-10-91 and regulated in Chapter 300-10-1 of the Rules and Regulations of the State of Georgia, "Public Employers, Their Contractors and Subcontractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program," accessed at <http://www.dol.state.ga.us>, as further set forth in the certification attached as **Exhibit B**. Additionally, Contractor represents that it has complied with any and all requirements of § 50-36-1 prior to the submittal of the Proposal and execution of this Contract.

12.0 ASSIGNMENT AND SUBCONTRACTORS

The Contractor shall not assign or subcontract the whole or any part of this Contract without the City's prior written consent, except Contractor may subcontract a portion of the Services if same has been expressly provided for in the Proposal by providing the name of the subcontractor and the portion of Services being subcontracted. In the event subcontractors are utilized by Contractor for the performance of certain services hereunder, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Contract and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform services hereunder by Contractor shall perform such services in accordance with all terms and conditions of this Contract.

13.0 AMENDMENTS

No amendments to this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of the parties.

14.0 DRUG-FREE WORK PLACE

Contractor shall maintain a Drug Free Workplace pursuant to the federal Drug Free Workplace Act, as amended from time to time, and shall further ensure that its agents and subcontractors maintain a Drug Free Workplace pursuant to other applicable state laws and regulations. By execution of this Agreement, Contractor certifies that:

- (1) a drug-free workplace will be provided for the Contractor's employees during the performance of this Agreement;
- (2) each subcontractor hired by Contractor shall be required to ensure that the subcontractor's employees are provided a drug-free workplace; and
- (3) Contractor, including its employees, agents and subcontractors, will not engage in any unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Agreement.

15.0 POLICY OF NON-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall not discriminate against any person in its operations, activities or delivery of services under this Contract and shall further ensure that Contractor's agents and/or subcontractors comply with same. Contractor, its agents and subcontractors shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any employee, applicant or person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for the provision or denial of employment or service delivery.

16.0 CONFLICTS OF INTEREST/COLLUSION/CONTINGENT FEES

- 16.1 Neither Contractor nor any of its officers, employees, agents or representatives shall have or hold any employment or contractual relationship that is antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Contract.
- 16.2 Neither Contractor nor any of its directors, officers, employees, agents or representatives shall obtain any kickbacks or benefits for itself, themselves or other clients as a result of any City purchases or transactions.
- 16.3 Contractor shall not collude with other City contract providers regarding City business or matters. Contractor shall not enter into any business relationships with other City contract providers regarding City business or matters, without the approval of the City Manager, which approval may be withheld at the City Manager's sole discretion.
- 16.4 Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, company, Contractor, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. Provided however, this provision does not encompass Contractor's ability to have hired or engaged consultants to assist in preparation of the proposal and delivery of the services hereunder. For the

breach or violation of this provision, the City shall have the right to terminate the Contract without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

- 16.5 Prior to the performance of Services, Contractor agrees that it will provide the City with a written oath from all officers, agents or other persons who may have acted on behalf of or represented Contractor in preparing its Proposal, which shall provide that such person did not cause or induce any other party from withdrawing a proposal in response to the RFP.

17.0 ADDITIONAL TERMS

The City shall not be bound by any terms and conditions included in any Contractor invoice, packaging, catalog, brochure, technical data sheet, or other document which attempts to impose any condition in variance with or in addition to the terms and conditions contained herein.

18.0 ANTITRUST ACTIONS

For good cause and as consideration for executing this Contract or placing this order, Contractor acting herein by and through its duly authorized agent hereby conveys, sells, assigns, and transfers to the City of Johns Creek all rights, title, and interest to and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of Georgia relating to the particular goods or services purchased or acquired by the City of Johns Creek pursuant hereto.

19.0 PUBLIC RECORDS

Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to the City, subject to the provision of O.C.G.A. §50-14-1 *et seq.*, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Contract by the City. Contractor agrees to retain all public records in accordance with the City's records retention and disposal policies, O.C.G.A. 50-18-92 *et seq.* and the Georgia Administrative Code. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

20.0 REPORTING REQUIREMENTS AND AUDIT RIGHTS

Written status reports shall be submitted to the City on a regular basis (weekly/monthly, as directed by the City) providing, at a minimum, data or information regarding the Services delivered to the City during the previous period. Further, upon two (2) days prior notice, the City shall the right to inspect and audit any and all records (including, without limitation financial records) of Contractor that pertain to Contractor's performance of Services, fees or expenses invoiced to the City by Contractor, or any obligations imposed by this Contract.

21.0 OWNERSHIP OF DOCUMENTS

Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the City of Johns Creek upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the City. Other materials, statistical data derived from other clients and other client projects, software, methodology and proprietary work used or provided by the Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the City and may be protected by a copyright held by the Contractor

and the Contractor reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under the Georgia Open Records Act, to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services.

22.0 USE OF CITY LOGO

To the extent requested by the City Manager, the City logo shall be displayed by Contractor on equipment and vehicles while being used in providing Services hereunder, in a format, size and color approved and provided by the City; provided however, the City logo shall not be used on any such equipment and vehicles when Contractor is not providing Services. All use of the City's logo shall be approved by the City Manager or his designee.

23.0 CONFIDENTIAL INFORMATION

23.1 Access to Confidential Data. The Contractor's employees, agents and subcontractors may have access to confidential data or information maintained by the City to the extent necessary to carry out the Contractor's responsibilities under the Contract. The Contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the City. If it is reasonably likely the Contractor will have access to the City's confidential information, then:

(i) The Contractor shall provide to the City a written description of the Contractor's policies and procedures to safeguard confidential information;

(ii) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;

(iii) The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and

(iv) The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract. The private or confidential data shall remain the property of the City at all times. Some services performed for the City may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Contract.

23.2 No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated, unless otherwise required by law, without the written consent of the City, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the City. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the City.

23.3 Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the City and cooperate with the City in any lawful effort to protect the confidential information.

23.4 **Reporting of Unauthorized Disclosure.** The Contractor shall immediately report to the City any unauthorized disclosure of confidential information.

23.5 **Survives Termination.** The Contractor's confidentiality obligation under the Contract shall survive termination of the Contract.

24.0 NOTICES

Any notice required or permitted by this Contract shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail.

If to the City:

City Manager
City of Johns Creek
12000 Findley Road
Suite 400
Johns Creek, GA 30097

With a copy to:

City Attorney
City of Johns Creek
12000 Findley Road
Suite 400
Johns Creek, GA 30097

If to Contractor:

Optech Monette, LLC
44 Old Canton Street
Alpharetta, GA 30004
Attn: _____

25.0 GOVERNING LAW

This Contract shall be governed in all respects by the laws of the State of Georgia. The Superior Court of Fulton County, Georgia shall have exclusive jurisdiction to try disputes arising under or by virtue of this contract; provided however, if federal jurisdiction governs any such dispute, venue shall be in the United States District Court, Northern District of Georgia.

26.0 ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties with respect to the subject matter contained herein; subject to Section 8.0, all prior agreements, representations, statements, negotiations, and undertakings are suspended hereby. Neither party has relied on any representation, promise, or inducement not contained or otherwise incorporated herein.

27.0 SPECIAL TERMS AND CONDITIONS

(Attached are any special terms and conditions to this contract, if applicable:) NONE

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed by their duly authorized officers as of the day and year set forth next to each signature.

OPTECH MONETTE, LLC

By:

DATE

ATTEST

By:

DATE

CITY OF JOHNS CREEK

By:
Mayor

DATE

By:
City Clerk

DATE

Approved as to form and legal
sufficiency subject to execution
by the parties:

By:
City Attorney

DATE

EXHIBIT A
SCOPE OF SERVICES

1. General.

Contractor shall perform the following services:

- Provide park maintenance services to include mowing, trimming, cleaning, trash removal, mulching and other services as specified for the City's 4 parks.
 - Newtown Park
 - Ocee Park
 - Shakerag Park
 - Autrey Mill Nature Preserve and Heritage Center
- Provide personnel and equipment to complete the tasks as described herein.
- Provide crew(s) with the proper number of staff and equipment to perform park maintenance identified in the scope and in assigned work orders. Adequate personnel must be provided to meet safety requirements at all times.
- Some of this work will necessitate after hours call out and/ or weekend work. Provide crews available for incidents, emergencies and weather related emergencies on a 24 hour on-call basis with a 2 hour response time.

2. Work Order Priority.

Contractor shall perform services in accordance with Work Orders provided by the City and pursuant to an established work order priority schedule. After hours and emergency work orders may be authorized verbally and followed up with a written work order. The following priority identifiers shall have the corresponding meaning:

- Priority 1: Complete within 24 hours.
- Priority 2: Complete within 72 hours.
- Priority 3: Complete within 10 business days.
- Priority 4: Complete within scheduled maintenance period.

3. Equipment.

Contractor shall provide equipment and vehicles necessary to complete the tasks as described and within the timeframes specified. Contractor shall maintain equipment in a clean and professional condition.

4. Park Services.

- Park Coverage Requirements – Contractor shall provide personnel for park coverage as follows:
 - Weekday evenings (year round) – one staff member with truck – Monday through Friday from 4:00PM to 9:00PM.
 - Saturdays (24 Saturdays during spring and fall athletic seasons) – two staff members each with a truck from 7:00AM to 5:00PM. One assigned to maintain Newtown Park and Autrey Mill Nature Preserve and the other assigned to maintain Ocee Park and Shakerag Park.
 - Saturdays (28 Saturdays during summer and winter season) – one staff member with truck from 8:00AM to 1:00 PM.
 - Sundays (52 Sundays) – one staff member with truck from 8:00AM to 1:00PM.
 - Special events - provide up to 100 hours for activities such as Movies in the Park, Fall Festival, Egg Hunt, etc.
 - Holidays (11 Holidays) – one staff member with truck from 8:00AM to 1:00PM.

- Routine Maintenance – Contractor shall visually inspect the assigned area at least once daily, Monday through Sunday. Contractor shall evaluate site conditions and identify potential maintenance needs or safety hazards which require immediate attention. Contractor shall identify excessive litter or debris, graffiti, broken or vandalized amenities which may create a safety hazard. Adjustments in the daily schedule shall be made based on the findings of these inspections. Contractor shall perform maintenance services as needed.

- Preventive Maintenance – Contractor shall perform preventive measures to avoid maintenance issues that could become a hazard to park users and result in unnecessary costs. These items include but are not limited to:
 - Winterizing restrooms, water fountains, faucets and irrigation systems
 - Painting and sanding wood structures on benches, bridges and playgrounds
 - Cleaning and clearing gutter, drains and pipes

- Repairs – Contractor shall follow work order procedures and priorities to react to any requests for repairs. Problem areas identified through daily visual inspections of facilities and grounds, biannual inspections of facilities and grounds, and emergency reports by the contractor and park users will be reported to the City's Public Works Director or his designee who will follow up and schedule repairs as needed.

- Litter, Debris and Trash Removal – Contractor shall:
 - Remove trash, ground litter, and debris daily or as often as needed during the week
 - Empty trash containers when they are more than half filled or are attracting bees and insects at the time of inspections or when park usage indicates that containers may be filled to capacity before the next inspection

- Inspect specific areas such as pavilion rentals and athletic areas for litter and debris and remove litter and debris prior to scheduled use during normal working schedule
 - Remove and replace trash liners placed at dog parks, dog water stations, pavilions and player areas daily regardless of how much or how little the containers are filled
 - Pick up ground trash and debris in the park while checking the trash containers
 - Report any debris that is too large to remove to the City's Public Works Director or his designee
 - Provide a 30 cubic yard roll-off container on site in an inconspicuous location for deposit of all trash from receptacles on site. The container will be provided by a responsible vendor and will be emptied as needed. Check trash from all containers daily and collect and deposit trash in the roll-off three days per week. Install new plastic bags in all trash containers as required.
- Restroom Cleaning – Contractor shall:
 - Inspect and clean restrooms daily at a minimum and more often based on usage, particularly at rental and athletic facilities
 - Restroom cleaning includes, but is not limited to, removing all litter and debris, sweeping and mopping floors, scrubbing toilets, sinks and urinal with disinfecting cleaner, and refilling toilet paper and paper towels as needed
 - Wash and scrub restroom floors and walls on a monthly basis
- Graffiti Removal – Contractor shall:
 - Remove graffiti within 24 – 48 hours from the time it is identified whenever possible
 - Clean, remove or paint over graffiti. Report graffiti which cannot be easily removed or painted over to the City's Public Works Director or his designee. Take pictures for documentation.
- Vandalism Repairs – Contractor shall:
 - Secure any vandalized area that is creating a public safety hazard immediately upon identification. This may include securing the areas for safety reasons, removing the object or placing a barrier around the area to prevent possible public access
 - Schedule necessary repairs based on the urgency of the repair
 - Document and report all vandalism to the City's Public Works Director or his designee
- Playground and Sand Volleyball Court Inspection and Repair – Contractor shall:
 - Visually inspect each playground every week
 - Clear playground areas of trash and debris on a daily basis
 - Check and blow off walking areas as needed on a daily basis
 - Rake and remove debris from playground sand and volleyball sand areas each week
 - Perform and complete the following playground inspection on a monthly basis:

- Check proper movement and possible wear of all dynamic elements and lubricate as needed
 - Inspect all nuts and bolts and tighten as needed
 - Inspect all pins, clamps, s-hooks and parts to ensure that they are securely attached in the proper locations and adjust as needed
 - Inspect for pinch points, rough edges and cracks of plastic, metal or wood surfaces and adjust as needed
 - Inspect all posts, handles, decks and play components for protruding objects that could result in injury and adjust as needed
 - Inspect all fall areas for proper depth and hard rake to fill in low areas
 - Inspect the playground and immediate areas for broken glass, trash and debris and remove debris as needed
 - Immediately restore missing or broken equipment or park furniture to a safe condition. If permanent repairs are not immediately possible, take immediate measures to restrict access to the equipment site and to adequately warn park patrons of the hazardous situation. This may include securing the area for safety reasons, removing the object or placing a barrier around the area to prevent possible public access.
 - Add sand to playground sandboxes and sand volleyball courts twice per year as directed
 - Add mulch to playground as directed
 - Prune trees and shrubs once per year or as needed
 - Sand wood rails as needed
 - Clean wood and seal as directed
 - Paint playground metal structures as directed
- Tennis and Basketball Court Inspection and Repair – Contractor shall:
 - Conduct visual inspections on tennis courts and basketball courts daily and schedule repairs as needed
 - Check the court surfaces and immediate areas for broken glass, trash and debris and remove debris as needed
 - Check for tripping hazards such as vertical separation along cracks. Document or repair as necessary
 - Remove any weeds growing in cracks that may exist on the court surface
 - Inspect all nets of damage and replace as needed
 - Inspect all posts, goals and backboards for damage or necessary repairs
 - Inspect gates for proper operation and lubricate as needed
 - Inspect all fencing and ensure there are no protruding bolts or wires that may create a safety hazard
 - Inspect to ensure that windscreens are properly hung without any rips or tears and repair as needed

- Inspect to ensure that all signs are not vandalized and that they are in the proper locations
- Pressure wash courts, picnic tables, walkways and concrete surfaces yearly or as needed
- Spray weeds out in and around court area
- Sidewalks and Trails – Contractor shall:
 - Inspect all sidewalks and trails Monday through Sunday for cleanliness and safety, and report any areas of concern
 - Blow all sidewalks and trails regularly to remove leaves and debris
 - Pick up all ground trash prior to blowing
 - Prune low-hanging limbs to eliminate potential hazards
 - Remove fallen limbs and debris immediately
 - Remove dead trees that could fall on the trail
 - Inspect and repair trail surface as directed
- Pavilions – Contractor shall:
 - Blow and clean daily
 - Clean prior to any scheduled rental and inspect after the rental for additional cleaning or repairs as needed
 - Blow roofs to remove leaves and debris twice a year
 - Conduct pavilion inspections of area and structures yearly
 - Coordinate repairs and upgrades with the City's Public Works Director or his designee
- Landscape and Turf – Contractor shall:
 - During the growing season (April 1 through October 31):
 - Mow all common turf areas on a weekly basis at the proper levels for each type of turf, except that the Shakerag Park undeveloped fields in the back area of the park shall be mowed once every two weeks during the growing season and the off-season (this field is to be mowed 26 times during the year)
 - Mow all athletic turf fields to a height of 1-2 inches twice per week, preferably on Monday and Friday
 - String trim all posts, benches, tables, trash containers, fence lines, tree, grills and buildings as part of the mowing operation
 - Remove grass clippings from ball fields when visible
 - During the off-season (November 1 through March 31):
 - Mow all common turf areas once every four weeks at the proper levels for each type of turf
 - Mow all athletic turf fields to a height of 1-2 inches once weekly

- String trim all posts, benches, tables, trash containers, fence lines, tree, grills and buildings as part of the mowing operation
- Remove grass clippings from ball fields when visible
- Blow hard surfaces to remove debris, including dug-outs and stands
- Trim and edge, remove debris (sticks and limbs) and provide weed control outside normal turf areas to prevent encroachment
- Maintain embankments as needed, prune plants and tree limbs up to 14 feet in height and less than 2.5 inches in caliper, and pick up and dispose of trash
- Edging Curbs, Sidewalks and Pavilions – Contractor shall:
 - Edge all curbs, sidewalks and pavilions once per week between April 1 through October 31
 - Remove all grass clippings and debris from the curbs and sidewalk areas after each edging
- Aerating Turf – Contractor shall:
 - Perform core aeration of all athletic field turf at least twice per year, including once in the spring just before fertilization and once in the fall. Perform aeration when the turf is actively growing and not under stress. Space aeration holes between 2-3 inches (this often requires 3 passes in different directions). Crumble and spread dried soil cores over the turf by using a flexible steel mat or by some other means. Use a vibratory tine aerator to a depth of 4-6 inches during the winter months and as needed during the rest of the year to alleviate compaction.
 - Provide evaluation and recommendations for aeration and reseeding of the turf athletic fields
- Overseeding – Contractor shall:
 - Overseed turf athletic fields as directed. Apply seed at a rate of 10 to 15 pounds per 1000 square feet depending on the field and its use requirements. Additional replacement applications may be needed if rain and play dictate additional applications.
- Fertilizing Turf – Contractor shall:
 - Provide a seven-point chemical program for all athletic turf areas, except embankments and sides of streets. Fertilizer program shall include pre-emergent weed control fertilizations and post-emergent treatments consistent with best management practices.
 - Treat all areas of the park for fire ants once per year prior to the warmer months and as needed during the warmer months
 - Conduct soil testing on each athletic field at least once per year
 - Apply fertilizer as directed

- Herbicide Use – Contractor shall:
 - Post areas after spraying to warn park users
 - Store herbicides in OSHA approved containers
 - Wear appropriate protective clothing while applying
 - Use non-selective herbicides, such as Round-Up, to kill grass and weeds that are growing in cracks, around posts, around trees, along fence lines, along curb and gutters, or in other identified areas where no vegetation is desired
 - Use pre-emergent herbicides to control the germination and spread of broadleaf weeds in plant beds and turf areas
 - Use post-emergent herbicides to control emergent broadleaf weeds that are currently in plant beds or turf areas

- Sodding – Contractor shall:
 - Sod bare spots in areas which are located on steep slopes, in drainage areas, and on athletic fields as directed. Sprig or overseed and add hay to other areas as directed
 - Ensure the soil is slightly moist when sod is transplanted
 - Add starter fertilizer at a rate of one pound of nitrogen per 1000 square feet of area
 - Irrigate the new sod frequently enough so that the underlying soil is always moist, but do not saturate
 - Spot sod areas as required

- Topdressing Athletic Fields – Contractor shall:
 - Top dress athletic field as directed
 - Add sand mix to turf with thatch problems or in areas with uneven surfaces
 - Apply less than ½ inch of material during the application
 - Top dress turf areas after a heavy aeration and incorporate the material by mat dragging

- Irrigation System Management / Maintenance – Contractor shall:
 - Test irrigation system before watering season begins. Test each zone for operation, water pressure, head damage, broken lines, etc.
 - Maintain and repair the irrigation system as directed
 - Shut off the irrigation system no later than November 15th, shut off the water at the meter and open existing drains and drain the system

- Flower Bed Maintenance – Contractor shall:
 - Place pine straw/mulch in landscape islands and around the base of trees planted in turf to a minimum of two foot radius from the tree as directed
 - Mulch shall not contact/cover the tree trunk. A mulch free area of 6 inches wide at the base of the tree shall be provided to avoid disease and decay. Mulching in shrub and flower beds should be 3 -6 inches deep and contained within the border of the bed

- Replace pine straw / mulch twice per year in depleted areas
- Perform weed control in shrub and flower beds as required from February through October
- Remove weeds in excess of 4 inches by pulling or cultivating immediately
- Restrict use of herbicides to park areas that are environmentally sensitive, such as Autry Mill Nature Preserve

- Pruning – Contractor shall:
 - Prune to remove hazardous, broken, diseased or deadwood from a tree or shrub and / or rejuvenate the shape of the plant
 - Remove diseased or dead trees immediately for disease control and to prevent safety hazards
 - Replace dead plants as directed

- Parking Lot maintenance – Contractor shall:
 - Daily check parking lots to ensure cleanliness and safety
 - Daily remove litter and debris
 - Daily check trash cans and empty as needed
 - Weekly blow leaves and excessive dirt
 - Prune trees and shrubs located near parking spaces yearly or as needed to avoid safety hazards
 - Spray or hand pull weeds in parking lot area as needed
 - Inspect lots yearly to determine if marking of spaces, fire lanes and other markings are visible and make recommendations for repairs
 - Check parking lot lights twice per year and make recommendations for repairs
 - Replenish gravel lots with material as directed

- Baseball Field Maintenance – Contractor shall:
 - Add infield clay/sand mix during the winter months prior to scheduled play in the spring and if necessary, add infield mix in the summer months before play in the fall
 - Sod cut and box scrape all lips to eliminate hazards
 - Spot sod as directed
 - Drag infields daily (Monday through Saturday) during the playing and practice season to provide a safe playing surface
 - Drag infields twice per week during the off season
 - Inspect outfield turf daily to locate any holes in the playing surface and fill all holes with top soil and cover with sand
 - During the off season, cut out bare or uneven areas as directed and replace with fresh sod
 - Repair any fencing that is detached or curling
 - Blow out dugouts daily during the playing and practice season

- Blow off common areas and bleachers daily
- Inspect dugout gate latches and doors weekly and make repairs as needed
- Inspect areas for safety hazards and make repairs as needed

- Field Rentals – Contractor shall:
 - Prepare baseball fields (drag, chalk, etc.) for special events and/or field rentals as directed. Special events/field rentals may occur during the week and/or weekends.

- Baseball Field Procedures (Newtown Park and Ocee Park) – Contractor shall:
 - Daily remove trash
 - Daily inspect turf areas
 - Daily check for safety hazards such as holes in the field of play
 - Daily blow off concrete surfaces, sidewalks and dugouts
 - Drag baseball infields for practices and games during the playing season
 - Rake and maintain bullpen areas for practices and games during the playing season
 - Weekly monitor irrigation system for watering turf areas
 - Re-sod worn turf areas as directed
 - Inspect and repair fences as needed
 - Inspect and repair scoreboards as needed
 - Inspect and repair batting cages as needed
 - Coordinate the replacement of lights for fields as needed
 - Paint dugouts and score towers as needed
 - Replace mulch twice per year
 - Prune tree and shrubs around baseball fields once per year
 - Top dress grass infields and outfields twice per year (spring and fall)
 - Core aerate grass infields and outfields twice per year
 - Winterize irrigation system and fountains

- Rectangular Athletic Fields (Newtown Park and Shakerag Park) – Contractor shall:
 - Daily remove trash
 - Daily inspect turf areas
 - Daily check for safety hazards such as holes in the field of play
 - Daily blow off concrete surface areas around athletic fields
 - Weekly monitor irrigation system for watering turf areas
 - Re-sod worn turf areas as directed
 - Inspect and repair fences as needed
 - Top dress grass fields twice per year (spring and fall)
 - Core aerate grass fields twice per year
 - Winterize irrigation system and fountains

- Facility and Building Maintenance – Contractor shall:

- Visually check and clean restrooms and indoor facilities daily
- Report all maintenance concerns to the City's Public Works Director or his designee
- Move, remove and install fences, goalposts, picnic tables, tables, chairs, bleachers, benches, etc. as required for transition to different sports seasons
- Install, repair or replace, as required, signs stating "No Skate Boarding", "No Dumping", "No Loitering", "Remove All Pet Waste" and "Keep All Pets on a Leash" or other similar signs requested by the City
- Concession / Restrooms / Indoor Buildings (All Parks) / Newtown Clubhouse, Senior Center and all Autrey Mill Buildings – Contractor shall:
 - Daily inspect, clean and stock restrooms
 - Daily remove trash and litter inside and from surrounding areas
 - Daily inspect areas for maintenance concerns
 - Weekly inspect turf areas and flower beds
 - Weekly monitor and repair irrigation operations
 - Pressure wash floors and walls monthly or more often as needed
 - Clean out grease traps at Senior Center every three months
 - Replenish landscaping mulch / pine straw twice per year
 - Paint restrooms as needed
 - Replace and repair fixtures as needed
 - Prune shrubs and trees around building as directed
 - Clean gutters and drains around buildings as needed
 - Strip and wax floor twice per year
 - Inspect and repair exterior building lights
 - Winterize and activate irrigation systems
 - Inspect exterior of buildings and paint when necessary
 - Perform annual inspection and certification of all fire extinguisher units
 - Through a state licensed contractor, treat each building with EPA approved pesticides in accordance with best management practices
- Dog Parks (two at Newtown Park) – Contractor shall:
 - Daily remove litter, animal waste and trash
 - Daily inspect and remove debris and trees
 - Daily blow entrance area
 - Daily inspect turf areas
 - Daily inspect area for trip hazards and washouts
 - Daily inspect drains and remove any debris
 - Daily inspect and clean splash pad filter
 - Daily inspect fencing and repair as needed
 - Replenish waste bags as needed
 - Fill in holes in fenced dog play area as needed

- Prune limbs and shrubs as needed
- Remove dead trees and limbs as needed
- Re-sod and repair worn areas
- Aerate and over seed grass in the winter
- Monitor irrigation system and splash pad water system
- Winterize and activate irrigation system and fountains

- Lake Maintenance (Newton Park) as Directed – Contractor shall:
 - Inspect all areas of the lake and make application of appropriate aquatic herbicides to the body of the lake as well as along the shorelines to prevent the growth of nuisance vegetation and control algae
 - Use only chemicals which have been approved and registered by the United States Environmental Protection Agency for aquatic use
 - Remove all trash and debris from shoreline, spillway and within the lake
 - Conduct inspection and general maintenance of the lake's aerator/fountain as needed
 - Prune shrubs and trees around lake as needed

EXHIBIT B

IMMIGRATION AND SECURITY FORM

**IMMIGRATION AND SECURITY FORM
CONTRACTOR AFFIDAVIT AND AGREEMENT**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Johns Creek has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 989-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the City of Johns Creek, contractor will secure from such subcontractors(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or substantially similar form. Contractor further agrees to main records of such compliance and provide a copy of each such verification to the City of Johns Creek at the time of the subcontractor(s) is retained to perform such service.

EEV / Basic Pilot Program* User Identification Number

BY: Authorized Officer or Agent
(Contractor Name)

Date

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON
THIS _____ DAY OF _____ 201____

Notary Public

My Commission Expires: _____

*As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the “EEV/ Basic Pilot Program” operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

(End of Form)

AGENDA REPORT



To: Honorable Mayor and City Council Members

From: Tom Henrikson, Senior Contracts Manager

By: John Kachmar, City Manager

Date: November 22, 2010

Agenda: November 29, 2010 Work Session – Agenda Item: Review of Contracts for Road Work Maintenance

Recommendation: Award contract for \$1,004,652.36 to Blount Construction for the maintenance of the City's roads and sidewalks.

Background: The City decided to contract directly for this service as opposed to the previous process of having the services provided through a contract with CH2M Hill.

Review/Description: A pre-bid conference was held on October 22, 2010 and the proposals were due on November 15, 2010. The proposals were evaluated on November 19, 2010. These evaluations were based on the evaluation criteria as set forth in the RFP and the evaluation committee has recommended awarding the bid to Blount Construction who submitted the highest rated proposal.

Financial Impact: The City is required to fund the annual Maintenance contract costs of \$1,004,652.36.

Alternative: Not award the bid.

Concurrent Review: John Kachmar, City Manager
John Henderson, Purchasing Manager
Scott Hastey, Assistant City Attorney Legal

Attachments: Letter of recommendation from the Purchasing Manager

Effective Date: _____

Expiration Date: _____



**CONTRACT AGREEMENT
FOR THE PROVISION OF
FIELD SERVICES – ROAD WORK MAINTENANCE SERVICES
(REQUEST FOR PROPOSAL NO. 10-319-1)**

This Agreement ("Contract") is made and entered into this ____ day of _____, 2010, by and between the **CITY OF JOHNS CREEK, GEORGIA**, a municipal corporation of the State of Georgia (the "City"), and **BLOUNT CONSTRUCTION COMPANY, INC.**, a Georgia corporation with its principal office located at 1730 Sands Place, Marietta, Georgia 30067 ("Contractor"); heretofore referred to jointly as the "Parties."

WHEREAS, the City is charged with the responsibility for the establishment of contracts for the acquisition of goods, materials, supplies and equipment, and services by the various departments of the City of Johns Creek; and

WHEREAS, the City has caused Request for Proposal (RFP) No.10-319-1, Field Services – Road Work Maintenance, to be issued soliciting proposals from qualified Contractors to furnish all items, labor services, materials and appurtenances called for within such proposal; and

WHEREAS, thereafter the City issued Addendum No. 1 to RFP No. 10-319-1 (RFP No. 10-319-1, as amended, referred to hereinafter as "RFP No. 10-319-1" or "RFP"); and

WHEREAS, the contractor selected pursuant to RFP No. 10-319-1 is required to provide the services as called for in the specifications; and

WHEREAS, the Contractor submitted a Proposal in response to RFP No. 10-319-1 ("Proposal"); and

WHEREAS, the Contractor's submittal was determined by the City to be the proposal most advantageous to the City; and

WHEREAS, the City Council desires to award the contract for the services to be provided pursuant to the RFP to Contractor.

NOW THEREFORE, in consideration of the foregoing recitals, the sums hereinafter set forth and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1.0 SCOPE OF SERVICES

- 1.1 **Services.** The Contractor has agreed and by these presents does agree with the City to furnish all equipment, tools, materials, skill, labor of every description, and all things necessary to carry out and complete in a good, firm, substantial and workmanlike manner the services set forth in the Scope of Services, which is attached hereto and incorporated herein as **Exhibit A**, in accordance with the terms of this Contract (the “Services”). The Services shall be performed in strict conformity with the specifications provided for in the RFP and Proposal, which shall form an essential part of this Contract. In addition to the foregoing, subject to Section 8.0 hereof, the following terms and conditions, amendments, and other documents are incorporated by reference and made a part of the terms and conditions of this Contract as is fully set out herein:

- **RFP No. 10-319-1, as amended (RFP)**
- **Contractor’s Proposal in response to RFP No. 10-319-1 (Proposal)**

- 1.2 **Time for Performance.** During the term of this Contract, work orders shall be submitted to Contractor by the City, or its designee, requesting the performance of certain Services by Contractor (“Work Orders”). Services are required to be performed within the periods of time set forth in the Work Order or pursuant to the work order priority schedule (See Exhibit A), or as otherwise provided in Exhibit A, the RFP and/or the Proposal; provided however, in the event the period of time for the performance of any service is not set forth in the Work Order, Exhibit A, the RFP or the Proposal, the City will determine the basic period of performance for the completion of any service and notify Contractor of the same via written notice. If no specific period for the completion Services is set forth in writing, such time period shall be a reasonable period of time based upon the nature of the activity. If the completion of this Contract is delayed by actions of the City, then and in such event the time of completion of this Contract shall be extended for such additional time within which to complete the performance of the Contract as is required by such delay. This Contract may be extended by mutual consent of both the City and the Contractor for reasons of additional time, additional services and/or additional areas of work.

- 1.3 **City’s Designee for Oversight of Performance of Services.** Contractor expressly acknowledges and agrees that the City may designate an independent contractor of the City to provide oversight of Contractor’s performance of Services. At the time of execution of this Agreement, CH2M Hill, Inc., a Florida corporation (“CH2M Hill”), has been contracted with by the City to provide certain professional services for the City, including providing oversight of the Services to be performed by Contractor herein. City agrees to provide Contractor with at least thirty (30) days written notice in the event the City’s designee for provision of oversight of Services is changed from CH2M Hill.

2.0 COMPENSATION

- 2.1. **Fee.** Contractor shall be paid a fixed fee in the amount of **One-Million-Four-Thousand-Nine-Hundred-and-Fifty-Two and 36/100’s Dollars (\$1,004,952.36)** for the performance of Services during the term of this Contract in accordance with the terms of the Proposal (See Financial Proposal, Exhibit B). One-Twelfth (1/12) of such fixed fee shall be billed to the City on a monthly basis following the delivery of Services for such month.
- 2.2 **Pricing.** It is contemplated from time to time, that Contractor may be required to perform or City may request that Contractor provide certain services that are over and beyond the services being compensated pursuant to Section 2.1. Compensation for the performance of any such additional services shall be in accordance with the rates and prices set forth in the Proposal. Unless clearly

stated otherwise herein, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties. The prices offered by Contractor and listed on the attached Financial Proposal, a copy of which is attached hereto as Exhibit "B" and incorporated herein, shall be firm throughout the term of this Contract.

- 2.3 **Invoices.** If applicable, and unless the RFP provides otherwise, the Contractor shall submit, on a monthly basis (or, if applicable, regularly on the periodic basis set forth in the RFP), an invoice for the Services provided to the City under the Contract at the billing address specified in the RFP or as provided herein. The invoice shall comply with all applicable rules concerning payment of such claims. The City shall pay all approved invoices in arrears and in accordance with applicable provisions of City law. Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the City for any goods or services provided by or on behalf of the Contractor under the Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Contract. Standard payment terms: Net-30.
- 2.4 **Delay of Payment Due to Contractor's Failure; City's Right to Set-Off.** If the City in good faith determines that the Contractor has failed to perform or deliver any service or product as required by the Contract, the Contractor shall not be entitled to any compensation under the Contract until such service or product is performed or delivered. In this event, the City may withhold that portion of the Contractor's compensation which represents payment for services or products that were not performed or delivered. To the extent that the Contractor's failure to perform or deliver in a timely manner causes the City to incur costs, the City may deduct or set off the amount of such incurred costs from any amounts payable to Contractor. The City's authority to deduct such incurred costs shall not in any way affect the City's authority to terminate the Contract.
- 2.5 **Set-Off Against Sums Owed by the Contractor.** In the event that the Contractor owes the City any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, the City may set off the sum owed to the City against any sum owed by the City to the Contractor in the City's sole discretion.
- 3.0 **TERM**
- 3.1 **Term.** Pursuant to O.C.G.A. § 36-60-13, this Contract is for a term of one (1) year commencing December 1, 2010, and terminating November 30, 2011 (the "initial term") without further obligation on the part of either party other than outstanding obligations incurred prior to the expiration of such term.
- 3.2 **Contract Renewal.** The City shall have the option, at its sole discretion, to renew the Contract for up to four (4) successive one (1) year terms on a year-to-year basis by giving the Contractor written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term and requesting Contractor's written consent for renewal of the Contract. Renewal will depend upon the best interests of the City, funding, and Contractor's performance. Renewal will be accomplished through the issuance of a Notice of Award Amendment. Upon the City's election to renew any part of this Contract, Contractor shall remain obligated to perform in strict accordance with this Contract unless otherwise agreed by the City and the Contractor.
- 3.3 **Contract Extension.** In the event that this Contract shall terminate or be likely to terminate prior to the making of an award for a new contract for similar services, the City may, with the written consent of Contractor, extend this Contract for such period as may be necessary to ensure the City

continuing services.

4.0 INDEPENDENT CONTRACTOR

- 4.1 **Independent Contractor Status.** Contractor is and shall remain an independent contractor; not an employee, agent or servant of the City, and Contractor shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, or employer/employee relationship with the City. Services provided by Contractor shall be by employees, agents or subcontractors of Contractor and subject to supervision by Contractor, and not as officers or employees of City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, and other similar administrative procedures applicable to services rendered under this Agreement shall be the obligation of Contractor.
- 4.2 **Liability for Employment Related Compensation.** The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, sub-contractors, agents, volunteers or representatives, including coverage or benefits related but not limited to local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation insurance; disability, injury, or health insurance; professional liability insurance; errors and omissions insurance; or retirement account contributions in regards to the Contractor provision of Services under this Contract. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds or retirement accounts, insurance premiums or payments, workers compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever. Pursuant to Section 5.0, in the event City is demanded or called upon to assume any such liabilities, Contractor shall indemnify the City for any and all damages and expenses, including legal fees, incurred as a result thereof.
- 4.2 **Licenses, Registrations, Certifications and Permits.** The Contractor shall be responsible for obtaining and maintaining in a valid status, all licenses, registrations, certifications and permits necessary to perform the Services as required by law. Contractor represents to the City that the Contractor and its employees are properly licensed and/or registered within the State of Georgia for the performance of the Services required herein, provided such licensure and/or registration is required by applicable law. Contractor shall provide copies of any such licenses, certifications or permits to the City.
- 4.3 **No Agency.** Neither the City nor the Contractor has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise mutually agreed to in writing. The Contractor agrees not to represent itself as the City's agent for any purpose to any party or to allow any employee of the Contractor to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. The Contractor shall assume full liability for any contracts or agreements the Contractor enters into on behalf of the City without the express knowledge and prior written consent of the City.

5.0 INDEMNIFICATION

The Contractor agrees to indemnify, hold harmless and defend the City, its officers, employees and agents from and against any and all liabilities, suits, actions, legal proceedings, claims, demands, damages, costs and expenses (including attorney's fees)("Claims") to the extent related to or arising out of Contractor's breach of any of the representations and warranties provided herein, Contractor's breach of any of the terms of this Contract, or any negligent or intentional act or omission of the Contractor, its agents, employees, or subcontractors, except for any Claims that arise from the City's sole negligence.

6.0 INSURANCE

6.1 Insurance Generally. The Contractor shall obtain and shall continuously maintain during the term of this Contract insurance of the kind and in the minimum amounts specified as follows:

6.1.1 Statutory Worker's Compensation and Employers Liability Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by Georgia law. If Contractor is self-insured, Contractor shall additionally provide the City with a certificate from the Georgia Board of Workers' Compensation stating that the Contractor qualifies to pay its own workers' compensation claims.

6.1.2 Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) per occurrence and in the aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City, and its elected officials, officers, employees and agents as additional insured parties.

6.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than of One Million Dollars (\$1,000,000) per occurrence and in the aggregate with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all of Contractor's subcontractors. Such coverage must include all automotive equipment used in the performance of the Contract, both on and off any work site, and such coverage shall include non-ownership and hired cars (vehicles and equipment) coverage. Such insurance shall be endorsed to name the City, and its elected officials, officers, employees and agents as additional insured parties.

6.2 Requirements of Insurance.

6.2.1 Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

6.2.2 By naming the City as an additional insured on Contractor's insurance policy, the City is only securing protection from liabilities arising out of Contractor's negligence as per the applicable policy. The only insurance policy whereby the City will be listed as an additional insured shall be the Comprehensive General Liability and Comprehensive Automobile policies.

6.2.3 No policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.

6.2.4 Every policy of insurance shall provide that the City will receive notice no less than thirty (30) calendar days prior to any cancellation, termination, or a material change in such policy.

6.2.5 Proof of required insurance shall be maintained in all equipment and motor vehicles insured in accordance with the provisions of this Contract.

6.3 **Failure to Obtain or Maintain Insurance.** The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Contract. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Contract upon which the City may immediately terminate this Contract.

6.4 **Insurance Certificates.** Prior to commencement of the Services, the Contractor shall submit to the City certificates of insurance for all required insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section and its subsections shall be indicated on each certificate of insurance.

6.5 **Additional Insurance Provisions.**

6.5.1 Contractor will ensure that any and all policies of insurance procured hereunder shall provide for a waiver of subrogation against the City, and Contractor waives any claim against the other arising in contract or tort which is covered by its insurance hereunder.

6.5.2 Contractor will additionally name the City's contractor providing oversight of Services on behalf of the City pursuant to Section 1.3 of this Contract as an additional insured on its policies for comprehensive general liability insurance and comprehensive automobile insurance, and shall provide certificates of insurance providing for same. At the time of execution of this Contract, CH2M Hill is the contractor for the City providing such oversight. City agrees to provide Contractor with at least thirty (30) days written notice in the event the City's designee for provision of oversight of Services is changed from CH2M Hill.

7.0 **TERMINATION**

7.1 **Immediate Termination.** Pursuant to O.C.G.A. § 36-60-13, this Contract will terminate immediately and absolutely if the City determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the City cannot fulfill its obligations under the Contract, which determination is at the City's sole discretion and shall be conclusive. Further, the City may terminate the Contract for any one or more of the following reasons effective immediately without advance notice:

7.1.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

7.1.2 The City determines that the actions, or failure to act, of the Contractor, its agents,

employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;

7.1.3 The Contractor fails to comply with confidentiality laws or provisions; and/or

7.1.4 The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

7.2 **Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for the City to declare the Contractor in default of its obligations under the Contract:

7.2.1 The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform, to the City's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;

7.2.2 The City determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;

7.2.3 The Contractor fails to make substantial and timely progress toward performance of the Contract;

7.2.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the City reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

7.2.5 The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;

7.2.6 The Contractor has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion; or

7.2.7 The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State, the City, or a third party.

7.3 **Notice of Default.** If there is a default event caused by the Contractor, the City shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the City's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the City may:

(i) Immediately terminate the Contract without additional written notice; and/or

(ii) Procure substitute goods or services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor; and/or,

(iii) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

- 7.4 **Termination for Convenience.** The City may terminate this Agreement for convenience at any time upon thirty (30) day written notice to the Contractor. In the event of a termination for convenience, Contractor shall take immediate steps to terminate work as quickly and effectively as possible and shall terminate all commitments to third-parties unless otherwise instructed by the City. Provided that no damages are due to the City for Contractor's failure to perform in accordance with this Agreement, the City shall pay Contractor for work performed to date in accordance with Section 2.0 herein. The City shall have no further liability to Contractor for such termination.
- 7.5 **Payment Limitation in Event of Termination.** In the event of termination of the Contract for any reason by the City, the City shall pay only those amounts, if any, due and owing to the Contractor for goods and services actually rendered up to and including the date of termination of the Contract and for which the City is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the City under the Contract in the event of termination. The City shall not be liable for any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead, project close-out costs, termination costs or other costs associated with the performance of the Contract.
- 7.6 **Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the City, the Contractor shall:
- (i) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the City may require;
 - (ii) Immediately cease using and return to the City, any personal property or materials, whether tangible or intangible, provided by the City to the Contractor;
 - (iii) Comply with the City's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;
 - (iv) Cooperate in good faith with the City, its employees, agents and Contractors during the transition period between the notification of termination and the substitution of any replacement Contractor; and
 - (v) Immediately return to the City any payments made by the City for goods and services that were not delivered or rendered by the Contractor.

8.0 INCLUSION OF DOCUMENTS

The RFP and Response, including any best and final offer, are incorporated in this Contract by reference and form an integral part of this agreement. In the event of a conflict in language between this Contract and the foregoing documents incorporated herein, the provisions and requirements set forth in this Contract shall govern; provided however, to the extent any of Contractor's obligations or duties set forth in the Proposal exceed the requirements provided within the RFP or this Contract, or the City finds any of the terms set forth in the Proposal more desirable, the terms set forth in the Proposal shall control. Subject to the foregoing, in the event of a conflict between the language in the RFP, as amended, and the

Proposal, the language in the former shall govern.

9.0 PERFORMANCE AND PAYMENT BONDS

Prior to or at the time of execution of this Contract, the Contractor, as Principal, and a surety company listed in the Federal Register and licensed to write surety insurance in the State of Georgia, as surety, shall give a Contract Performance Bond and a Payment Bond, each in the amount of one hundred percent (100%) of the contract price for the use of all persons doing work or furnishing skills, tools, machinery, or materials under or for the purpose of the agreement, in accordance with the provisions of the law of the State of Georgia including, but not limited to O.C.G.A. §§ 32-4-119 and 36-91-21 et seq., as applicable. The life of these bonds shall extend through the life of this agreement including sixty (60) day maintenance period (where applicable) and a twelve-month warranty/guarantee period after the completions of work performed under this contract agreement.

10.0 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

11.0 COMPLIANCE WITH ALL LAWS AND LICENSES

The Contractor must obtain all necessary licenses and comply with local, state and federal requirements. The Contractor shall comply with all laws, rules and regulations of any governmental entity pertaining to its performance under this Agreement.

11.1 Federal Requirements.

11.1.1 Federal Compliance Regulations

Federal regulations apply to all City of Johns Creek contracts using Federal funds as a source for the solicitation of goods and services. Successful bidders must comply with the following Federal requirement as they apply to:

1. Equal Employment Opportunity – The Contractor shall not discriminate against any employee or applicant or employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
2. Reports - The submission of reports to the City on behalf of the U.S. Department of Housing and Urban Development as may be determined necessary for the activities covered by this contract, which is federally funded;
3. Patents - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive and irrevocable right to use, and to authorize others to use, for Federal Government purposes:

- a. Any patent that shall result under this contract; and
 - b. Any patent rights to which the Contractor purchases ownership with grant support;
 - 4. Copy rights - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
 - a. The copyright in any work developed under this contract; and
 - b. Any rights of copyright to which the Contractor purchases ownership with grant support.
 - 5. Access to books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purposes of making audit, examination, excerpts and transcriptions by Federal agencies, the Comptroller General of the United States, or any of their duly authorized representatives; and
 - 6. Retention of all required records for three years after the City makes final payment and all other pending matters are closed.
- 11.2 **Georgia Security and Immigration Compliance Act.** Contractor agrees to comply with all applicable requirements of the Georgia Security and Immigration Compliance Act of 2006 as codified in O.C.G.A. §§ 13-10-90 and 13-10-91 and regulated in Chapter 300-10-1 of the Rules and Regulations of the State of Georgia, "Public Employers, Their Contractors and Subcontractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program," accessed at <http://www.dol.state.ga.us>, as further set forth in the certification attached as **Exhibit C**. Additionally, Contractor represents that it has complied with any and all requirements of § 50-36-1 prior to the submittal of the Proposal and execution of this Contract.

12.0 ASSIGNMENT AND SUBCONTRACTORS

The Contractor shall not assign or subcontract the whole or any part of this Contract without the City's prior written consent, except Contractor may subcontract a portion of the Services if same has been expressly provided for in the Proposal by providing the name of the subcontractor and the portion of Services being subcontracted. In the event subcontractors are utilized by Contractor for the performance of certain services hereunder, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Contract and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform services hereunder by Contractor shall perform such services in accordance with all terms and conditions of this Contract.

13.0 AMENDMENTS

No amendments to this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of the parties.

14.0 DRUG-FREE WORK PLACE

Contractor shall maintain a Drug Free Workplace pursuant to the federal Drug Free Workplace Act, as amended from time to time, and shall further ensure that its agents and subcontractors maintain a Drug Free Workplace pursuant to other applicable state laws and regulations. By execution of this Agreement, Contractor certifies that:

- (1) a drug-free workplace will be provided for the Contractor's employees during the performance of this Agreement;
- (2) each subcontractor hired by Contractor shall be required to ensure that the subcontractor's employees are provided a drug-free workplace; and
- (3) Contractor, including its employees, agents and subcontractors, will not engage in any unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Agreement.

15.0 POLICY OF NON-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall not discriminate against any person in its operations, activities or delivery of services under this Contract and shall further ensure that Contractor's agents and/or subcontractors comply with same. Contractor, its agents and subcontractors shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any employee, applicant or person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for the provision or denial of employment or service delivery.

16.0 CONFLICTS OF INTEREST/COLLUSION/CONTINGENT FEES

- 16.1 Neither Contractor nor any of its officers, employees, agents or representatives shall have or hold any employment or contractual relationship that is antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Contract.
- 16.2 Neither Contractor nor any of its directors, officers, employees, agents or representatives shall obtain any kickbacks or benefits for itself, themselves or other clients as a result of any City purchases or transactions.
- 16.3 Contractor shall not collude with other City contract providers regarding City business or matters. Contractor shall not enter into any business relationships with other City contract providers regarding City business or matters, without the approval of the City Manager, which approval may be withheld at the City Manager's sole discretion.
- 16.4 Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, company, Contractor, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. Provided however, this provision does not encompass Contractor's ability to have hired or engaged consultants to assist in preparation of the proposal and delivery of the services hereunder. For the

breach or violation of this provision, the City shall have the right to terminate the Contract without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

- 16.5 Prior to the performance of Services, Contractor agrees that it will provide the City with a written oath from all officers, agents or other persons who may have acted on behalf of or represented Contractor in preparing its Proposal, which shall provide that such person did not cause or induce any other party from withdrawing a proposal in response to the RFP.

17.0 ADDITIONAL TERMS

The City shall not be bound by any terms and conditions included in any Contractor invoice, packaging, catalog, brochure, technical data sheet, or other document which attempts to impose any condition in variance with or in addition to the terms and conditions contained herein.

18.0 ANTITRUST ACTIONS

For good cause and as consideration for executing this Contract or placing this order, Contractor acting herein by and through its duly authorized agent hereby conveys, sells, assigns, and transfers to the City of Johns Creek all rights, title, and interest to and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of Georgia relating to the particular goods or services purchased or acquired by the City of Johns Creek pursuant hereto.

19.0 PUBLIC RECORDS

Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to the City, subject to the provision of O.C.G.A. §50-14-1 *et seq.*, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Contract by the City. Contractor agrees to retain all public records in accordance with the City's records retention and disposal policies, O.C.G.A. 50-18-92 *et seq.* and the Georgia Administrative Code. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

20.0 REPORTING REQUIREMENTS AND AUDIT RIGHTS

Written status reports shall be submitted to the City on a regular basis (weekly/monthly, as directed by the City) providing, at a minimum, data or information regarding the Services delivered to the City during the previous period. Further, upon two (2) days prior notice, the City shall the right to inspect and audit any and all records (including, without limitation financial records) of Contractor that pertain to Contractor's performance of Services, fees or expenses invoiced to the City by Contractor, or any obligations imposed by this Contract.

21.0 OWNERSHIP OF DOCUMENTS

Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the City of Johns Creek upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the City. Other materials, statistical data derived from other clients and other client projects, software, methodology and proprietary work used or provided by the Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the City and may be protected by a copyright held by the Contractor

and the Contractor reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under the Georgia Open Records Act, to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services.

22.0 USE OF CITY LOGO

To the extent requested by the City Manager, the City logo shall be displayed by Contractor on equipment and vehicles while being used in providing Services hereunder, in a format, size and color approved and provided by the City; provided however, the City logo shall not be used on any such equipment and vehicles when Contractor is not providing Services. All use of the City's logo shall be approved by the City Manager or his designee.

23.0 CONFIDENTIAL INFORMATION

23.1 Access to Confidential Data. The Contractor's employees, agents and subcontractors may have access to confidential data or information maintained by the City to the extent necessary to carry out the Contractor's responsibilities under the Contract. The Contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the City. If it is reasonably likely the Contractor will have access to the City's confidential information, then:

(i) The Contractor shall provide to the City a written description of the Contractor's policies and procedures to safeguard confidential information;

(ii) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;

(iii) The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and

(iv) The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract. The private or confidential data shall remain the property of the City at all times. Some services performed for the City may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Contract.

23.2 No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated, unless otherwise required by law, without the written consent of the City, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the City. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the City.

23.3 Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the City and cooperate with the City in any lawful effort to protect the confidential information.

23.4 **Reporting of Unauthorized Disclosure.** The Contractor shall immediately report to the City any unauthorized disclosure of confidential information.

23.5 **Survives Termination.** The Contractor's confidentiality obligation under the Contract shall survive termination of the Contract.

24.0 NOTICES

Any notice required or permitted by this Contract shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail.

If to the City:

City Manager
City of Johns Creek
12000 Findley Road
Suite 400
Johns Creek, GA 30097

With a copy to:

City Attorney
City of Johns Creek
12000 Findley Road
Suite 400
Johns Creek, GA 30097

If to Contractor:

Blount Construction Company, Inc.
1730 Sands Place
Marietta, GA 30067
Attn: _____

25.0 GOVERNING LAW

This Contract shall be governed in all respects by the laws of the State of Georgia. The Superior Court of Fulton County, Georgia shall have exclusive jurisdiction to try disputes arising under or by virtue of this contract; provided however, if federal jurisdiction governs any such dispute, venue shall be in the United States District Court, Northern District of Georgia.

26.0 ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties with respect to the subject matter contained herein; subject to Section 8.0, all prior agreements, representations, statements, negotiations, and undertakings are suspended hereby. Neither party has relied on any representation, promise, or inducement not contained or otherwise incorporated herein.

27.0 SPECIAL TERMS AND CONDITIONS

(Attached are any special terms and conditions to this contract, if applicable:) NONE

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed by their duly authorized officers as of the day and year set forth next to each signature.

BLOUNT CONSTRUCTION COMPANY, INC.

By:

DATE

ATTEST

DATE

CITY OF JOHNS CREEK

By:
Mayor

DATE

By:
City Clerk

DATE

Approved as to form and legal
sufficiency subject to execution
by the parties:

By:
City Attorney

DATE

EXHIBIT A
SCOPE OF SERVICES

1. General Performance.

- Contractor shall perform all construction and traffic maintenance work in accordance with Georgia Department of Transportation Standard Specifications for Construction of transportation Systems and other GDOT specifications as applicable.
- Contractor shall comply with all current State and Federal construction safety regulations, including OSHA regulations.
- Contractor shall comply with *Manual on Uniform Traffic Control Devices* (MUTCD, current edition) and the State of Georgia Department of Transportation standards for traffic control.
- Contractor shall submit a proposed Traffic Control Plan to the Public Works Director or his/ her designee before starting any work involving a lane or roadway closure, and no lane or roadway closure shall occur without the approval of the Public Works Director or his/her designee. All construction signs and devices will be in like new condition and meet the latest GDOT requirements. Further, all flaggers must be GDOT certified. Traffic control will include flagging and covering areas along the site area that may present safety issues with pedestrians. The Contractor must maintain a safe work zone for their employees, pedestrians and vehicular transportation. When a water source is required, Contractor shall secure a water meter from Fulton County. All water used on the project must be from a metered source.

2. Certifications.

Contractor shall provide the City with copies of CDL licenses, GDOT flagger certifications, IMSA certifications and any other required certifications or licenses.

3. Road Work Maintenance Services.

Contractor shall perform the following road work maintenance services:

- Provide labor and equipment for pothole patching, utility cut patching, major road repair, as directed.
- Provide labor and equipment for Right of Way clearing and maintenance, as directed. Clearing and maintenance to include vegetation trimming within the right of way of City streets as needed to provide adequate sight distance (vegetation trimming includes trimming as necessary to provide a clear view of traffic control devices

within the City, including removal of up to four (4) inch diameter trees and vegetation less than twenty (20) feet above ground).

- Provide labor and equipment for sidewalk, curbs and gutters and bike paths maintenance and repair, as directed. Maintenance and repairs may include, but are not limited to: concrete finishing, trip hazard grinding, quick patching, handicap ramp repair, sidewalk repair and other minor miscellaneous maintenance.
- Provide labor and equipment for minor pipe repairs (pipe replacements up to 20 feet in length, headwalls catch basin tops, pipe collars, etc.), as directed
- Provide labor and equipment for storm debris removal and hauling, as directed;
- Provide labor and equipment for snow and ice removal, sanding and salting, as directed;
- Provide personnel to complete the tasks as described herein. All work shall conform to Georgia Department of Transportation Standard Specifications, current edition.
- Provide crew(s) with the proper number of staff and equipment to perform road, sidewalk, right of way and any road work identified in the scope and in assigned work order. Adequate personnel must be provided to meet safety requirements at all times.
- Some of this work will necessitate after hours call out and/ or weekend work. Provide crews available for incidents, emergencies and weather related emergencies on a 24 hour on-call basis with a 2 hour response time.

4. Work Order Priority.

Contractor shall perform services in accordance with Work Orders provided by the City and pursuant to an established work order priority schedule. After hours and emergency work orders may be authorized verbally and followed up with a written work order. The following priority identifiers shall have the corresponding meaning:

- Priority 1: Complete within 24 hours.
- Priority 2: Complete within 72 hours.
- Priority 3: Complete within 10 business days.
- Priority 4: Complete within scheduled maintenance period.

5. Utility Locates.

Contractor shall stake proposed construction locations and request and confirm utility

locates as required by Georgia law.

6. Equipment.

Contractor shall provide equipment as required (for normal operations and emergency operations) to deliver the described services within the timeframes provided. Contractor shall maintain equipment in a clean and professional condition.

APPENDIX B

FINANCIAL PROPOSAL

Offeror Name: Blount Construction Company, Inc.

Scheduled Work

We propose to provide the City of Johns Creek with an exceptional eight person maintenance crew at the rate listed below:

\$ 1,004,952.36 / yr (40 concurrent hours per week)

\$ 83,746.03 / month

Scheduled Equipment

The equipment below will be available for use for the city municipal services and can be supplemented with any equipment that may be needed to complete normal work orders.

- 1 Rubbertire Backhoe
- 1 Ford F250 Crew Cab Truck
- 1 Ford F750 Flat Bed Dump Truck
- 1 Sand Spreader Truck or Spreader Attachment for the Flat Bed Dump
- 2 Quick Cut Asphalt/Concrete Saws
- 1 Asphalt Plate Tamp
- All gloves, earplugs, eye protection, safety boots, hardhats, rain suits, and safety vests with the City of Johns Creek Logo
- All required shovels, picks, lutes, rakes, brooms and ladders as needed
- All Portable safety signs, cones, and barrels to complete the work
- 1 Chainsaw
- 1 Power Blower
- 1 Arrow Board
- 1 Extra pickup truck

All of the equipment used will be maintained to a Clean and Professional standard reflecting Blount Construction and the City of Johns Creek's high standards.



**Compensation Schedule for
Overtime / Emergency Call Out Work**

1.	3 man crew	\$ 378.32 / hr
2.	4 man crew	\$ 478.32 / hr
3.	5 man crew	\$ 578.32 / hr
4.	6 man crew	\$ 678.32 / hr
5.	7 man crew	\$ 778.32 / hr
6.	8 man crew	\$ 878.32 / hr

The rates listed above include any or all of the equipment listed below.
Should any additional equipment be required, it can be provided at the rates shown on the attached rate sheet.

- 1 Rubbertire Backhoe
- 1 Ford F250 Crew Cab Truck
- 1 Ford F750 Flat Bed Dump Truck
- 1 Sand Spreader Truck or Spreader Attachment for the Flat Bed Dump
- 2 Quick Cut Asphalt/Concrete Saws
- 1 Asphalt Plate Tamp
- All gloves, earplugs, eye protection, safety boots, hardhats, rain suits, and safety vests with the City of Johns Creek Logo
- All required shovels, picks, lutes, rakes, brooms and ladders as needed
- All Portable safety signs, cones, and barrels to complete the work
- 1 Chainsaw
- 1 Power Blower
- 1 Arrow Board
- 1 Extra pickup truck



EQUIPMENT RENTAL RATES INCLUDING OPERATOR

	<u>RENTAL EQUIPMENT</u>	<u>HOURLY RATES</u>
	RUBBER TIRE HOE RAM	\$275.00
	MINI EXCAVATOR	\$93.00
	SKID STEER	\$88.00
310	JOHN DEERE BACKHOE	\$88.00
12G	CATERPILLAR MOTORGRADER	\$126.00
270	KOMATSU BACKHOE OR EQUAL	\$176.00
300	KOMATSU BACKHOE OR EQUAL	\$203.00
315	CATERPILLAR BACKHOE OR EQUAL	\$148.00
953	CATERPILLAR LOADER OR EQUAL	\$137.00
963	CATERPILLAR LOADER OR EQUAL	\$148.00
D-4	CATERPILLAR DOZER OR EQUAL	\$93.00
D-6	CATERPILLAR DOZER OR EQUAL	\$126.00
950	CATERPILLAR RUBBER TIRE LOADER OR EQUAL	\$126.00
	10 TON OFF ROAD TRUCK	\$126.00
	25 TON OFF ROAD TRUCKS	\$192.00
	SHOULDER SPREADER	\$250.00
	BROOM	\$143.00
ROLLERS		
	SHEEPFOOT	\$121.00
	SMOOTH DRUM	\$121.00
WATER TRUCK		
	SINGLE AXLE	\$154.00
	TANDEM AXLE	\$154.00
	ROLL OFF TRUCK	\$126.00
	TANDEM DUMP TRUCK	\$97.00
<u>ASPHALT CREW</u>		
Includes 3 operators, 5 laborers, 1 foreman, 1 spreader, 1 tack truck and 1 roller		\$750.00
<u>LABOR RATES</u>		
	LABORER	\$33.00
	OPERATOR	\$50.00
	FOREMAN	\$61.00
	SUPERINTENDENT	\$72.00

ADDITIONAL CHARGES

TWO (2) HOURS FOR MOVE IN
MINIMUM OF EIGHT (8) HOURS USAGE

*** PRICES SUBJECT TO CHANGE ***
*** FUEL SURCHARGES MAY BE IMPLEMENTED ***



BLOUNT
Construction
Company Inc.

1730 Sands Place
Marietta, GA 30067
Phone: 770-541-7333
Fax: 770-541-7340

Material Price List

- | | | |
|----|------------------|----------------|
| 1. | Hot Mix Asphalt | \$ 53.45 / TN |
| 2. | Concrete | \$ 110.21 / CY |
| 3. | Asphalt Millings | \$ 10.00 / TN |
| 4. | GAB | \$ 11.07 / TN |
| 5. | Type 3 Rip Rap | \$ 17.51 / TN |

EXHIBIT C

IMMIGRATION AND SECURITY FORM

**IMMIGRATION AND SECURITY FORM
CONTRACTOR AFFIDAVIT AND AGREEMENT**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Johns Creek has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 989-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the City of Johns Creek, contractor will secure from such subcontractors(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or substantially similar form. Contractor further agrees to main records of such compliance and provide a copy of each such verification to the City of Johns Creek at the time of the subcontractor(s) is retained to perform such service.

EEV / Basic Pilot Program* User Identification Number

BY: Authorized Officer or Agent
(Contractor Name)

Date

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON
THIS _____ DAY OF _____ 201____

Notary Public

My Commission Expires: _____

*As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the “EEV/ Basic Pilot Program” operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

(End of Form)



CH2M HILL
1000 Abernathy Road
Northpark 400
Suite 1425
Sandy Springs, GA 30328
Tel 678.512.3400
Fax 678.512.3183

November 23, 2010

Mr. John Kachmar, City Manager
City of Johns Creek
12000 Findley Road
Suite 400
Johns Creek, GA 30097

Dear John:

As you know, last week we finalized the Amendment to our current Services Agreement. We understand that due to holiday and vacation schedules you wish to place approval of the agreement on the agenda for the City Council meeting on December 13, 2010 rather than the November 29 City Council agenda. Because of this revised schedule, CH2M HILL hereby extends the terms of the letter Agreement dated November 5, 2010 until December 13, 2010.

The major terms of the proposal have previously been identified in correspondence letters dated July 7, 2010, September 9, 2010, September 27, 2010, and November 5, 2010 (copies attached). Those terms shall still apply.

CH2M HILL is requesting formal acknowledgement by the City Council at its November 29, 2010 meeting that the revised scope of services and pricing provided pursuant to the November 5, 2010 letter is acceptable and in effect until our subsequent revised agreement is finalized and approved at the December 13, 2010 City Council meeting. All other remaining terms and conditions of the Services Agreement shall remain in effect until the parties execute a new revised agreement.

If you have any questions, please do not hesitate to contact myself or Jon Mantay. Thank you again for the opportunity to serve the City of Johns Creek.

Sincerely,

A handwritten signature in cursive script that reads "Steve Meininger".

Steve Meininger
Senior Vice President
CH2M HILL

CONCURRENCE:
City of Johns Creek
City Manager

cc: Natalie Eldredge
Jonathan Mantay

ATTACHMENTS



To: Mayor and City Council

From: John Kachmar, City Manager

By: Monte Vavra, Finance Director

Date: 11/08/10

Agenda: Additional advance of operating capital to E-911 Fund -
Chatcomm—**MOVED TO 11-29-2010 COUNCIL AGENDA**

Issue: Deficit of E-911 collections matching operating costs

Background: The City of Johns Creek Fiscal Year 2011 Budget included an allocation in the General Fund contingency account in the amount of \$350,000 to be used to advance to Chatcomm working capital. The E-911 revenues have not met the original projections and the joint authority will need an infusion of working capital. The Authority anticipates increased E-911 revenue, but needs an infusion of capital until revenues are collected. It is recommended that the City of Johns Creek advance one half of the amount budgeted (\$175,000) and evaluate later in the year if more will be needed. Funds are anticipated to be repaid by future E-911 revenues over a five year period.

Basis for Recommendation: To approve the attached resolution authorizing the General Fund to advance to the E-911 Fund an additional \$175,000 and approve the ordinance in the E-911 fund to transfer the funds to Chatcomm.

Attachment(s): Resolution transferring funds
Ordinance appropriating E-911 budget

RESOLUTION AUTHORIZING THE GENERAL FUND ADVANCE OF ONE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$175,000) TO THE E-911 FUND TO PROVIDE FUNDING FOR THE JOINT PUBLIC SAFETY AND JUDICIAL FACILITIES AUTHORITY FOR THE CITIES OF SANDY SPRINGS, GEORGIA AND JOHNS CREEK, GEORGIA

WHEREAS, the City of Johns Creek, Georgia (the City) has entered into an Intergovernmental Agreement with the City of Sandy Springs for the Activation of the Joint Public Safety and Judicial Facilities Authority for the Cities of Sandy Springs, Georgia and Johns Creek, Georgia for the Provision of 911 Communications Services in the Cities of Sandy Springs and Johns Creek; and

WHEREAS, additional operational funds are required for the joint communication system in the amount of three hundred fifty thousand dollars (\$175,000); and

WHEREAS, the City of Johns Creek has establish an E-911 fund to receive 911 charges and wireless enhanced 911 charges and disburse said revenue to The Joint Public Safety and Judicial Facilities Authority for the Cities of Sandy Springs, Georgia and Johns Creek, Georgia (the "Authority"); and

WHEREAS, the General Fund will advance to the E-911 Fund an additional amount of three hundred fifty dollars (\$175,000) to be used for the continued operational costs; and

WHEREAS, the City will be reimbursed the capitalization of the start-up costs over a period of approximately five years from the Authority;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Johns Creek while in Regular Session on November 29, 2010 that:

Section 1. The Mayor and City Council hereby approves the additional advance of funds from the General Fund to the E-911 Fund the amount of one hundred seventy-five thousand dollars (\$175,000) to be used to pay operational costs to the Authority.

Section 2. The additional one hundred seventy-five thousand dollar (\$175,000) advance from the General Fund to the E911 Fund will be repaid from the Authority by the excess 911 service fees over a period of approximately five years.

Approved:

Michael E. Bodker, Mayor

SEAL

Attest:

Joan C. Jones, City Clerk

**AN ORDINANCE TO AMEND THE FISCAL YEAR 2011 BUDGET FOR THE
E-911 FUND OF THE CITY OF JOHNS CREEK, GEORGIA, APPROPRIATING
THE EXPENDITURES, ADOPTING THE REVISED ANTICIPATED REVENUES
FOR THE E-911 FUND**

WHEREAS, a 2011 Budget for each of the funds of the City was adopted by the Mayor and City Council at the Council meeting on September 13, 2010; and

WHEREAS, subsequent to the adoption of the fiscal year 2010 approved budget an additional advance of cash flow to the Chattahoochee River 9-1-1 Authority in order to maintain operations as the call center for E-911 calls and to dispatch public safety departments to calls for services,

WHEREAS, the E-911 fee collections are not meeting start-up projections the City of Johns Creek determined that an additional advance of one hundred seventy-five thousand dollars (\$175,000) of additional cash flow funds to be repaid to the City from the Authorities excess 911 revenues over a period of approximately five years,

WHEREAS, the City of Johns Creek City Council has approved a resolution for the General Fund to advance an additional amount of one hundred seventy-five thousand dollars (\$175,000) to the E-911 fund,

WHEREAS, the City of Johns Creek has established a special revenue fund to account for the receipt of E911 tax revenues and the advances from the City of Johns Creek General Fund and disbursements to the CHATCOMM,

WHEREAS, the monies received will be balanced and offset by designated expenditures, such that anticipated funding sources equal or exceed proposed expenditures.

NOW THEREFORE BE IT HEREBY ORDAINED by the Mayor and City Council of the City of Johns Creek while in regular session on November 29, 2011 that:

Section 1: the Budget Amendment, shown as "Exhibit A" attached hereto and by this reference made a part of this Ordinance, and shall be made part of the 2011 E911Fund Budget; and

Section 2: this Revised Budget is hereby approved and that the revised anticipated revenue presented is adopted in the amount shown and that the amount shown for E911 Fund as revised expenditures are hereby appropriated to the E911 Fund; and

Section 3: any increase or decrease in appropriations or revenues of any fund or for any department require approval of the Mayor and Council; and

Section 4: as provided in Section 6.27 of the City Charter, such amendments to the Budget may be made by majority vote of the Mayor and Council at any business meeting; and

Section 5: the expenditures shall not exceed the appropriations authorized by this Budget Amendment thereto and that expenditures for the fiscal year shall not exceed actual funding available; and

Section 6: the City Manager or his designee may promulgate all necessary internal rules, regulations and policies to ensure compliance with this Budget Ordinance.

SO ORDAINED, this the 29th day of November, 2010.

Approved:

Michael E. Bodker, Mayor

ATTEST:

Approved as to Form and Content:

Joan Jones, City Clerk

William F. Riley, City Attorney

(Seal)

**2010 BUDGET AMENDMENT
November 29, 2010
ATTACHMENT “A”**

E 911 Fund:

Anticipated Revenues – Other revenue	\$175,000
215-0000-389-1000	
Anticipated Expenses – Professional Services IGA	\$175,000
215-3600-521-2018	



AGENDA REPORT

To: Honorable Mayor and City Council Members

From: John Kachmar, City Manager

By: Ken Hildebrandt, Public Works Director

Date: November 8, 2010

Agenda: Consideration of the abandonment and disposition of a right-of-way adjacent to 825 Dewfield Ct. to Michael L. Rubinstein and Sandra D. Rubinstein—**MOVED TO 11-29-2010 COUNCIL AGENDA**

Recommendation: In order to properly effectuate an abandonment, pursuant to O.C.G.A. Section 32-7-2(c), the City Council must find that the right of way is not being used by the public to the extent that no public purpose is served by it or that its removal from the municipal road system is otherwise in the best public interest. Staff recommends that the City Council certify on the record this finding and vote to abandon this right-of-way as presented by the attached plat documents.

Issue: An "Application and Affidavit to Obtain Abandonment of Right-of-way" was submitted by the adjoining landowners Michael L. Rubinstein and Sandra D. Rubinstein pursuant to the settlement of the lawsuit between Michael L. and Sandra D. Rubinstein v. Albert and Belinda Cook and the City of Johns Creek.

Financial Impact: The City's right-of-way policy requires fair market value be paid to the City for abandoned right-of-way. Staff estimates the fair market value to be \$2,742.90.

Background: The 50' strip of right-of-way was originally deeded to Fulton County January 18, 1989 by T.O. Investments Inc.; however incorrect plat references and land conveyances outside the chain of title caused the current title and access issue. The City of Johns Creek is the successor in title to the 50' strip of right-of-way by operation of law. The City was named a party to the lawsuit as abandonment and disposition action is required by the City in order to clear title. This right-of-way has never been used for public road purposes and no future use is planned and no public purpose is served by it.

Alternative Approaches: The City Council can decide that the public is served by said right-of-way and deny abandonment.

Concurrent Review: Lenny Felgin, Mike Williams, Justin Kirouac, Cindy Jenkins, Kevin Dye,

Attachment(s): Rubinstein abandonment application, general location map, abandonment plat, site photo

Application and Affidavit to Obtain Abandonment of Right-of-Way

COMES NOW, Michael L. Rubinstein and Saundra D. Rubinstein the undersigned applicant, and makes the following affidavit and application to the City of Johns Creek, Georgia ("Johns Creek"). All facts contained herein are made under oath and notarized and the applicant, having been duly sworn under oath, states as follows:

1.

The applicant is the owner of the property set forth in the attached vesting deed and applicant owns the property adjoining the right-of-way of property as described in Deed Book 12326, Page 15 as shown on the attached survey.

2.

The applicant is requesting that the right-of-way of property as described in Deed Book 12326, Page 15 be abandoned for the following reasons: settlement of lawsuit between Michael and Saundra Rubinstein v. Albert and Belinda Cook and City of Johns Creek.

3.

In the event the right-of-way is abandoned by Johns Creek, such abandonment will not adversely affect any party in the immediate surrounding area and applicant states under oath that applicant knows of no party who would be left landlocked or in a hardship condition in the event that said right-of-way is abandoned by Johns Creek.

4.

Applicant states that any other parties with any potential or actual interest in the right-of-way have been notified by sending such person a copy of this affidavit.

5.

The history of the right-of-way, from its construction and dedication, through all its recorded owners till the present, is as follows: (year dedicated either by plat or deed, currently being used by which landowners, etc., submit copies of any recorded plats or deeds.)

See attached documents

6.

The physical condition of the right-of-way as of the date of this application is as follows:
(state whether paved, overgrown with trees, or whether there is any physical evidence of use):

Wooded area that has never been used for public purposes.

7.

Applicant hereby agrees to hold Johns Creek harmless from any and all responsibility, liability or damage of any type whatsoever regarding the abandonment of the City's interest in said right-of-way. It is understood by the applicant that applicant is not entitled to any abandonment as a matter of right, but only upon the terms and conditions as contained in this affidavit. Applicant hereby agrees The Mayor and Council may elect to sell the abandoned rights-of-way at its fair market value. The final decision regarding the disposition of the right-of-way abandonment will be made by the Johns Creek City Council.

8.

Applicant agrees to furnish Johns Creek, Georgia with **a plat of survey**, not more than ninety (90) days old, showing the location of the current right-of-way, the boundary lines of applicant's property, and the area of rights-of-way to be abandoned, as well as identify all utilities and drainage structures, pipes and ditches within the area of the subject right-of-way. Further, applicant agrees to record on the records of the Clerk of Fulton Superior Court, Atlanta,

Georgia the original quitclaim deed and boundary survey depicting the abandoned right-of-way, within forty-eight (48) hours following the granting of any abandonment of such right-of-way.

9.

In the event the abandonment is granted, applicant consents to the fact that thereafter the City shall not be required to reinstall, construct, or otherwise expend City funds to improve subject abandoned right-of-way.

10.

Applicant shows that, if the abandonment is granted, applicant's proposed use of caption property after the abandonment is as follows: In accordance with settlement of the lawsuit, the Rubenstein's will sell the Cook's an 18' driveway easement for access to their property if the Cook's property is developed with a single family residence. Otherwise the property shall remain in its current state as a wooded area.

11.

In the event of abandonment of subject right-of-way, Johns Creek specifically retains any and all easements for drainage, utility or purposes other than roadway purposes which may exist over, under, through, or across the subject right-of-way. Any release of private easement rights or easement rights other than those of Johns Creek, i.e. utility companies, must be released by that easement holder.

12.

Applicant shall submit with this document a fee of fifty dollars (\$150.00) for the processing of this application, along with a copy of the owner's vesting deed, survey of the proposed abandonment, and copy of any development plans for the property.

13.

Applicant agrees that a misrepresentation or inaccuracy, either intentional or accidental, made by applicant in this application of procedure shall authorize the City to terminate the processing of this application or, if such shall be discovered after this application has been

ATTACHMENTS

- Survey depicting area of right-of-way requested to be abandoned
- Metes and bounds legal description of area requested to be abandoned
- Copy of applicant's deed vesting title
- Copies of letters of consent from all adjoining landowners and other interested parties, if applicable
- Copy of right-of-way dedication plats or deeds, if applicable
- Attorney's title certificate documenting the history of the R/W through all of its recorded owners to present
- Processing fee of \$150.00

approved by the Johns Creek City Council, then such approval shall be subject to revocation by the City Council.

14.

Applicant agrees that the City of Johns Creek is not required to abandon the subject right-of-way, and the decision for approval or denial of this application shall be made within ninety (90) days of this application being filed with the City Clerk. The applicant shall be notified in writing of the date of any public hearing and City Council decision concerning the subject right-of-way within three (3) business days prior to the hearing and/or Council meeting.

This 2nd day of September, 2010.

Signed, sealed and delivered in the Presence of:

Marshelle Taylor
Notary Public
(SEAL)

Michael L. Rubinstein
Michael L. Rubinstein

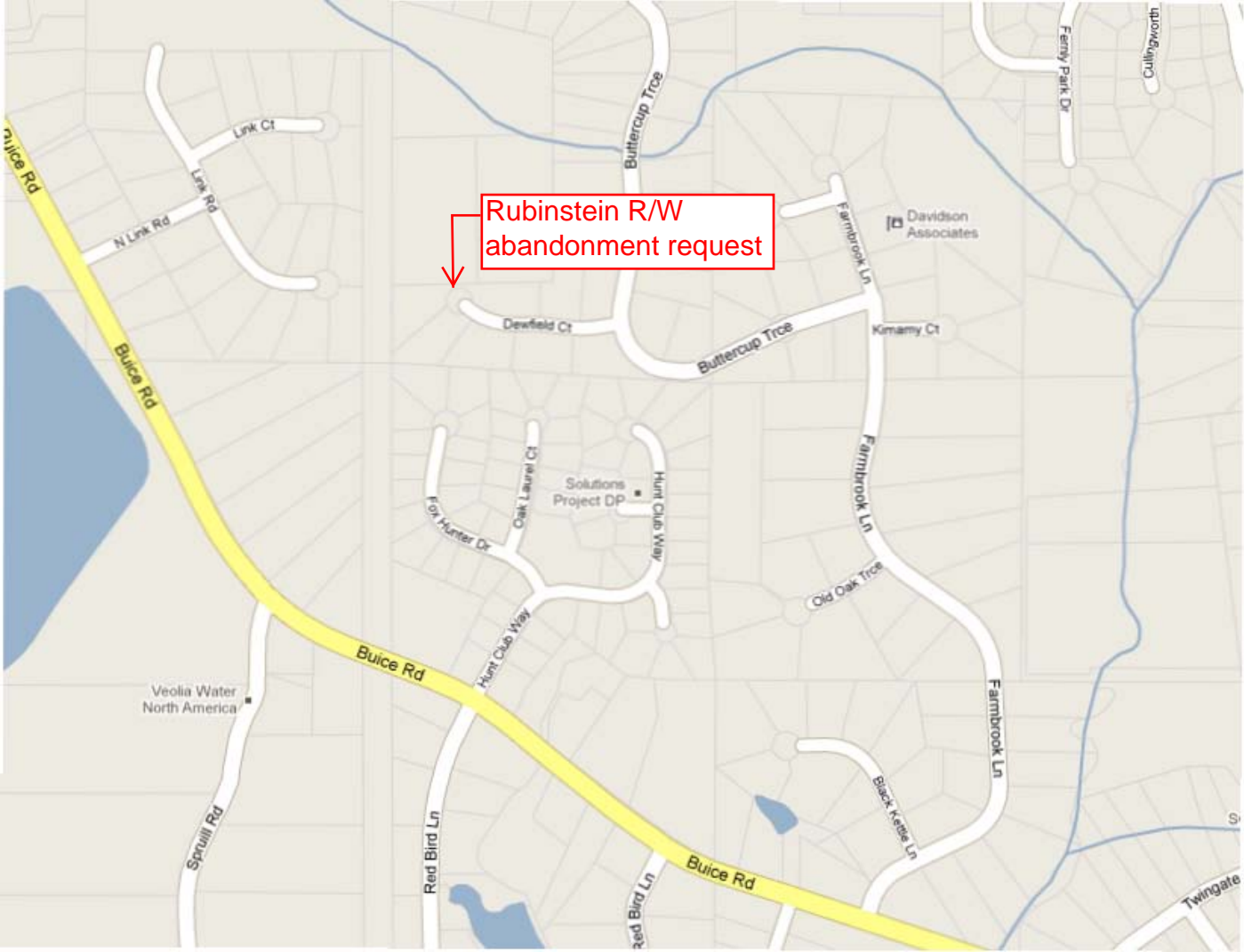
Saundra D. Rubinstein
Saundra D. Rubinstein

825 Dewfield Ct.
Address

Johns Creek GA 30022
City State Zip

770-453-0840
Phone Number

MARSHELLE TAYLOR
NOTARY PUBLIC
GWINNETT COUNTY
STATE OF GEORGIA
My Commission Expires April 9, 2013



Rubinstein R/W
abandonment request

- LEGEND
- APR. APPROXIMATE
 - B/L BUILDING SETBACK LINE
 - B/T BUILDING TIE
 - CONC CONCRETE
 - D.E. DRAINAGE EASEMENT
 - ESMT EASEMENT
 - Fnd. FENCE
 - FOUND FOUND
 - FOUND, CORNER
 - CTF FOUND, CRIMP TOP
 - OTF FOUND, OPEN TOP
 - RFB FOUND, REBAR
 - OCALC/SET CORNER
 - LAND LOT NUMBER
 - APR. L.L. LINE
 - LOT NUMBER
 - N/F. NOW OR FORMERLY
 - O/L ON-LINE
 - CMP PIPE, CORRUGATED METAL
 - RCP PIPE, REINFORCED CONCRETE
 - P.O.B. POINT OF BEGINNING
 - R/W RIGHT OF WAY
 - S.S. SANITARY SEWER
 - SSE S.S. EASEMENT
 - S/S SUBDIVISION
 - STONE WALL
 - TAX PARCEL
 - TYPICAL
 - W/D WOOD DECK

11-0501-0182-019-1
LOT 45, BLOCK A,
FARM BROOK SUBDIVISION,
UNIT FIVE - PHASE ONE
PLAT BOOK 156 PAGE 16
DEED BOOK 24201 PAGE 180
AREA - 1.025 ACRES
44,663 SqFt.

THIS MAP OR PLAT IS CERTIFIED TO THE NAME BELOW AND/OR INSURER OR MORTGAGOR. NO LIABILITY IS ASSUMED TO THIRD PARTIES. NO ABSTRACT OF TITLE WAS PERFORMED.

THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS A HORIZONTAL CLOSURE OF 1 FOOT IN 10,000+ FEET. THIS SURVEY HAS BEEN CALCULATED FOR CLOSURE BY LATITUDE AND DEPARTURE AND IS FOUND TO BE ACCURATE WITHIN 1 FOOT IN 20,000+ FEET.

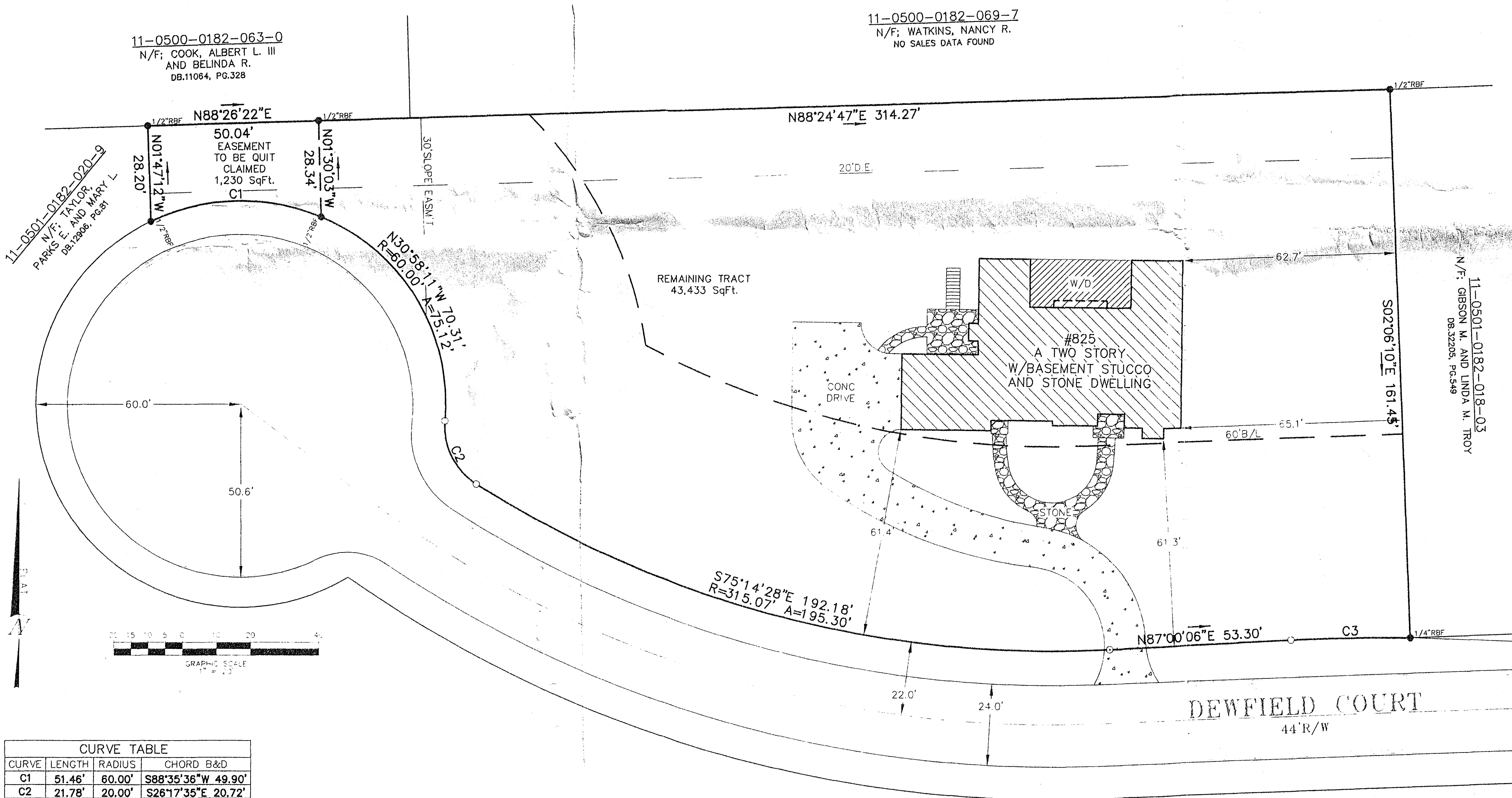
EQUIPMENT USED:
THEODOLITE READING DIRECTLY TO 03 SECONDS. ELECTRONIC DISTANCE METER READINGS DIRECTLY TO .005 FEET.

THE UTILITIES SHOWN ARE BASED ON FIELD OBSERVATIONS AND INFORMATION AVAILABLE AT THE TIME THE SURVEY WAS PERFORMED AND MAY NOT COMPRISE ALL UTILITIES ON OR ADJACENT TO THE PROPERTY, EITHER IN SERVICE OR ABANDONED. FURTHERMORE THE UNDERGROUND UTILITIES SHOWN MAY NOT BE IN THE EXACT LOCATION INDICATED, AS ASSUMPTIONS WERE MADE AS TO THE DIRECTION AND LOCATION. A DETAILED STUDY BY A COMPANY EQUIPPED AND QUALIFIED TO DETERMINE THE EXACT LOCATION OF UNDERGROUND UTILITIES MAY INDICATE A DIFFERENT DIRECTION, LOCATION OR TYPE.

THE EASEMENTS SHOWN HEREON WERE TAKEN FROM INFORMATION THAT WAS AVAILABLE AT THE TIME THE SURVEY WAS DONE AND MAY NOT BE ACCURATE AS TO THE EXTENT OR EXACT LOCATION OF ALL EASEMENTS ON SITE.

THE SETBACKS SHOWN HEREON ARE AS SHOWN ON PLAT BOOK 156 PAGE 16. SEE LOCAL ZONING MANDATES FOR FURTHER SETBACK REQUIREMENTS.

THIS PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS PER FEMA FLOOD INSURANCE RATE MAP NUMBER 13121C0089E PANEL 89 OF 490 COVERING FULTON COUNTY, GEORGIA DATED JUNE 22, 1998



JOB NUMBER: 0-080107

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ADVANCE SURVEY, Inc.
ALL MATTERS OF TITLE EXCEPTED

SCALE: 1"=20'	LAND LOT: 182
DATE: MAY 7, 2008	DISTRICT: FIRST
DRAWN BY: CJ	SECTION: -----
CHECKED BY: AGP	COUNTY: FULTON
PC: RG	STATE: GEORGIA

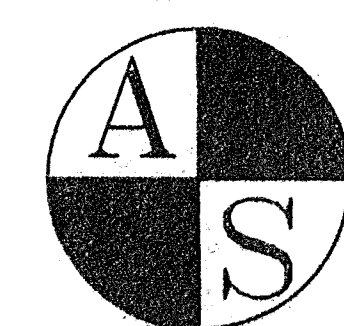
IN MY OPINION, THIS
PLAT IS A CORRECT
REPRESENTATION OF
THE LAND PLATTED
AND HAS BEEN
PREPARED IN
CONFORMITY WITH
THE MINIMUM
STANDARDS AND
REQUIREMENTS OF
LAW.



BOUNDARY SURVEY FOR:

MICHAEL L. AND
SAUNDRA D. RUBENSTEIN

Advance Survey, Inc.
634 N. CLAYTON STREET
LAWRENCEVILLE, GA. 30045
OFFICE: (770) 995-0938
FAX: (770) 995-8421





A RESOLUTION TO ABANDON THE RIGHT OF WAY ON PROPERTY LOCATED ON LOT 45, BLOCK A OF
FARM BROOK SUBDIVISION, FULTON COUNTY, GEORGIA

- WHEREAS, an "Application and Affidavit to Obtain Abandonment of Right-of-Way" was submitted by Michael and Sandra Rubinstein to abandon a 50-foot right-of-way strip originally deeded to Fulton County January 18, 1989 by T.O. Investments, Inc., on Lot 45, Block A of Farm Brook Subdivision, Fulton County, Georgia, and to which the City was a successor in title by operation of law; and
- WHEREAS, the attached Application and Affidavit for Abandonment specifically describes this right-of-way strip; and
- WHEREAS, the City Council has conducted, pursuant to O.C.G.A. Section 32-7-2, a proper public hearing to afford all neighbors and other interested parties the opportunity to voice any support and opposition thereto, and proper notice was made of same; and
- WHEREAS, the City has never utilized this right-of-way strip for a public purpose and no future use is planned for, nor public purpose served by, it; and
- WHEREAS, the City Council, having conducted the public hearing and participated in the discussion of this Application and Affidavit to Obtain Abandonment, desires to abandon said right-of-way and dispose of same pursuant to Chapter 7 of Title 32 of the O.C.G.A. and the City's Right-of-Way Policy.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF JOHNS CREEK, GEORGIA as follows:

Section 1: That the City Council hereby certifies and finds that the fifty-foot right-of-way strip described in detail in documentation attached hereto and incorporated herein (hereinafter "Right-of-way Strip") is not being used for the public to the extent that no public purpose is served by it and its removal from the municipal road system is otherwise in the best public interest.

Section 2: That pursuant to said certification and determination, the Right-of-Way Strip is hereby abandoned and designated no longer a part of the municipal road system.

Section 3: That the City Staff, City Manager and City Attorney are hereby directed to dispose of this Right-of-Way Strip pursuant to the requirements of Title 32, Chapter 7 of the O.C.G.A. and the City's Right-of-Way Policy by offering same for a determined fair market value price to the abutting landowners holding title through the owner from whom the Right-of-Way Strip was originally acquired, Michael and Sandra Rubinstein. The City Manager, City Staff and City Attorney are hereby authorized to execute all necessary documentation to effect the proper disposition thereof.

SO RESOLVED AND EFFECTIVE on this the 29th day of November, 2010.

Approved:

Michael E. Bodker, Mayor

Attest:

Joan C. Jones, City Clerk

(Seal)

**A RESOLUTION TO APPOINT A MEMBER TO POST "C" OF THE
BOARD OF ZONING APPEALS FOR THE CITY OF JOHNS CREEK, GEORGIA TO
FILL AN UNEXPIRED TERM**

- WHEREAS,** the City of Johns Creek is authorized by the City Charter to create Boards, Commissions and Authorities as the Mayor and City Council deem necessary; and
- WHEREAS,** through the adoption of Resolution 2007-06-55 at the regular session on June 18, 2007, the Mayor of the City of Johns Creek appointed and the Council of the City of Johns Creek approved the first members of the Board of Zoning Appeals for the City of Johns Creek; and
- WHEREAS,** the Board of Zoning Appeals is a decision making board and has the power to hear appeals and/or concerns in accordance with the City of Johns Creek Zoning Ordinance and Code of the City of Johns Creek; and
- WHEREAS,** pursuant to Chapter 2 of the Code of the City of Johns Creek, Georgia, the terms of the members shall be in an amount to be specified by the Mayor; and
- WHEREAS,** on June 8, 2009, the City Council appointed all seven members of the Board of Zoning Appeals to two-year staggered terms; and
- WHEREAS,** Board Member Chip Floyd resigned effective October 25, 2010 and his term is due to expire on January 15, 2010 and the City Council desires to appoint a new member to this post; and
- WHEREAS,** this Resolution shall become effective upon its adoption.

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the City of Johns Creek while in regular session on November 29, 2010 appoint Mary Shevlin to Post "C" as a member of the Board of Zoning Appeals:

Approved:

Michael E. Bodker, Mayor

Attest:

Joan C. Jones, City Clerk

Seal

BIO-- Mary Shevlin

My husband John and I have lived in the Johns Creek area since May 1991. We have two children, Elizabeth, a junior at Chattahoochee High School, and Jack, a sixth grader at Taylor Road Middle School.

Originally from Anderson, South Carolina, I graduated with a BS in Accounting from Clemson University. I also have a Masters of Taxation from the University of Georgia. I spent ten years in public accounting with a local firm in Atlanta.

Over the years, I have been active in PTA through my children's schools. I have been a room parent, an office volunteer, and once chaired the Community Outreach committee at State Bridge Crossing Elementary.

My most rewarding volunteer work has been through our church, Alpharetta Presbyterian Church. I have served as an elder, chaired the Personnel committee, and coordinated a \$2.2 million capital campaign. Currently, I am the elected Treasurer of the Church and sit on the Finance committee.

Please contact me if there is any more information you need.

Sincerely,
Mary Shevlin